

**H.R. 3670, THE ANTI-SPOOFING ACT OF 2013;  
H.R. ———, THE LPTV AND TRANSLATOR  
ACT OF 2014; AND H.R. ———, THE  
E-LABEL ACT**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON COMMUNICATIONS AND  
TECHNOLOGY  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
SECOND SESSION

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JULY 24, 2014  
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**THURSDAY, JULY 24, 2014**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:12 a.m., in room 2322 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Walden, Latta, Shimkus, Terry, Lance, Guthrie, Gardner, Long, Ellmers, Barton, Eshoo, Doyle, Braley, Welch, Matheson, and Waxman (ex officio).

Staff present: Ray Baum, Senior Policy Advisor/Director of Coalitions; Leighton Brown, Press Assistant; Andy Duberstein, Deputy Press Secretary; Graham Dufault, Policy Coordinator, Commerce, Manufacturing, and Trade; Gene Fullano, FCC Detailee; Kelsey Guyselman, Counsel, Communications and Technology; Grace Koh, Counsel, Communications and Technology; David Redl, Chief Counsel, Communications and Technology; Charlotte Savercool, Legislative Clerk; Shawn Chang, Democratic Chief Counsel, Communications and Technology; Margaret McCarthy, Democratic Professional Staff Member; Ryan Skukowski, Democratic Policy Analyst; and Patrick Donovan, Democratic FCC Detailee.

**OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. WALDEN. We will call to order the Subcommittee on Communications and Technology for our hearing on H.R. 3670, the Anti-Spoofing Act of 2013, the LPTV and Translator Act of 2014, and the E-LABEL Act. We are here today to conduct an important part of the committee's business, a legislative hearing on bills and discussion drafts. We will be considering three different but useful pieces of legislation that will benefit consumers, streamline electronic device manufacturing for the digital age and protect Americans from misleading communications.

H.R. 3670, the Anti-Spoofing Act of 2013, aims to prevent bad actors from using spoofing services to misrepresent who is sending a text message. Introduced by Representatives Barton and Meng, this bipartisan bill enhances the protections of the Truth in Caller ID Act of 2009 by extending the prohibition to text messaging.

Spoofing, when a caller purposefully falsifies who is originating a call or a text message, has often been used maliciously by scammers to trick unsuspecting recipients. By utilizing one of the many easily found spoofing services, the perpetrator can make a text message appear as though it is from anyone the sender chooses to impersonate; usually, posing as a familiar Web site, service or friend or relative of the recipient. Thinking they are talking to someone they know and trust, the person on the receiving end is convinced to give up personal and sensitive information like bank account numbers or passwords. For example, customers of a Florida credit union received text messages that were allegedly from the bank, alerting them to unusual activity on their account, and requesting information, including credit card numbers, PIN numbers and account numbers. While the credit union was able to quickly detect the scam and alert customers, there were thousands at risk for compromised personal information. This bill intends to protect cell phone users from this kind of harmful mischief in the same way we protect consumers from spoofing or voice caller ID.

Next, we will consider the LPTV and Translator Act of 2014, a discussion draft offered by Mr. Barton that addresses how the FCC should treat low-powered television stations and television translators in the upcoming broadcast incentive auction. The incentive auction was one of this committee's contributions to the Middle Class Tax Relief and Job Creation Act of 2012, and offers broadcasters compensation for relinquished spectrum to be used for other purposes. While low-powered stations and translators are not eligible to participate in the auction, this draft urges the FCC to account for the value of LPTV and translators to communities all across our country. Translators play an important role for so many in the mountain west, including my own district in eastern Oregon. I have long urged the Commission to keep this value in mind when conducting the repacking analysis, and was happy to work with Mr. Barton on the language on this discussion draft. This draft would memorialize that sentiment in law as well as allow LPTV and translator licensees additional opportunities to petition the FCC to stay on the air after the incentive auction process is complete.

Finally, we will consider the E-LABEL Act, this bipartisan, bicameral proposal is a commonsense piece of legislation that brings outdated regulations in line with consumer expectations. Currently, all equipment and devices that are licensed by the FCC for radio frequency compliance must have a physical label that shows the licensing information. You will see it right there on the back of your smart phone. The E-LABEL Act would allow manufacturers of devices with screens like smart phones to display a digital label rather than the physical mark on the device itself. Now, that makes it easier and less expensive to put a label on your ever shrinking electronics. This legislation is another example of bringing existing regulations in line with modern technology by allowing digital labeling consumers and regulators can still access important information easily without the sometimes onerous requirements on manufacturers. It reminds me of those labels on your mattress that says do not remove this label under penalty of law.

Ms. ESHOO. Under penalty of law.

Mr. WALDEN. E-labels can provide more detailed information. Did you ever cut them off, by the way? E-labels can provide more detailed information without the space limitations of a physical label, as well as potential cost savings as labels can become part of the code programmed into a device, rather than etched into the external body of the equipment.

I want to recognize the FCC for their work on this issue, led by Commissioners O’Rielly and Rosenworcel. The Commission issued guidance for manufacturers wishing to use digital labeling for their devices, including guidelines for how to properly display the information and how to educate consumers on accessing the labels. I also commend my colleagues, Representatives Latta and Welch, as well as Senators Fischer and Rockefeller, for their bipartisan work in this effort to streamline and modernize consumer protection rules. More efficient Government and regulation for the innovation era is a goal of the Energy and Commerce Committee, and one that our subcommittee is clearly committed to furthering.

So we look forward to the testimony of our witnesses, and I yield back the balance of my time.

[The prepared statement of Mr. Walden follows:]

#### PREPARED STATEMENT OF HON. GREG WALDEN

We’re here today to conduct an important part of this committee’s business: a legislative hearing on bills and discussion drafts. We’ll be considering three different but useful pieces of legislation that will benefit consumers, streamline electronic device manufacturing for the digital age, and protect Americans from misleading communications.

H.R. 3670, the Anti-Spoofing Act of 2013, aims to prevent bad actors from using “spoofing” services to misrepresent who is sending a text message. Introduced by Reps. Barton and Meng, this bipartisan bill enhances the protections of the Truth in Caller ID Act of 2009 by extending the prohibition to text messages. Spoofing, when a caller purposely falsifies who is originating a call or a text message, has often been used maliciously by scammers to trick unsuspecting recipients. By utilizing one of many easily found “spoofing” services, the perpetrator can make a text message appear as though it is from anyone the sender chooses to impersonate, usually posing as a familiar Web site, service, or friend or relative of the recipient. Thinking that they are talking to someone they know and trust, the person on the receiving end is convinced to give up personal and sensitive information, like a bank account number or password. For example, customers of a Florida credit union received text messages that were allegedly from the bank, alerting them to “unusual activity” on their account and requesting information including credit card numbers, PIN numbers, and account numbers. While the credit union was able to quickly detect the scam and alert customers, there were thousands at risk for compromised personal information. This bill intends to protect cell phone users from this kind of harmful mischief, in the same way we protect consumers from spoofing of voice caller ID.

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Finally, we will consider the E-LABEL Act. This bipartisan, bicameral proposal is a common sense piece of legislation that brings outdated regulations in line with consumer expectations. Currently, all equipment and devices that are licensed by the FCC for radio frequency compliance must have a physical label that shows the licensing information—you'll see it right there on the back of your smartphone. The E-LABEL Act would allow manufacturers of devices with screens like smartphones to display a digital label rather than the physical mark on the device itself, making it easier and less expensive to put a label on our evershrinking electronics.

This legislation is another example of bringing existing regulations inline with modern technology. By allowing digital labeling, consumers and regulators can still access important information easily, without the sometimes onerous requirements on manufacturers. E-labels can provide more detailed information without the space limitations of a physical label, as well as a potential cost-savings as labels can become part of the code programmed into a device, rather than etched into the external body of the equipment. I want to recognize the FCC for their work on this issue, led by Commissioners O'Rielly and Rosenworcel. The Commission issued guidance for manufacturers wishing to use digital labeling for their devices, including guidelines for how to properly display the information and how to educate consumers on accessing the labels. I also commend my colleagues, Reps. Latta and Welch, as well as Senators Fischer and Rockefeller, for their bipartisan work on this effort to streamline and modernize consumer protection rules. More efficient Government and regulation for the innovation era is a goal of the Energy and Commerce Committee and one that this subcommittee is committed to furthering.

I'd like to thank all of our witnesses for being here today to discuss these bills, including Reps. Latta and Meng who have graciously offered to appear and speak on their respective bills. I look forward to a conversation about these three pieces of potential legislation.

Mr. WALDEN. And now I recognize the gentlelady from California, the ranking member of the subcommittee, Ms. Eshoo, for an opening statement.

**OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Ms. ESHOO. Thank you, Mr. Chairman. As you stopped, I thought is he going to recognize me? And you did. Thank you.

Good morning, everyone. And welcome to our colleague, Congresswoman Meng from New York. We are delighted that you are here and proud of the work product that you have brought forward.

3670, the Anti-Spoofing Act of 2013, is a bipartisan bill, and it is aimed at reducing the number of fraudulent phone calls and text messages received by millions of Americans. It is a very practical bill. It is a bill that is really going to correct something that I think everyone in the country wants corrected. So I really salute you for coming up with something that is very practical.

Just this morning, NPR ran a story about a series of spoofing incidents in Maryland where people received calls purported to be from the State police demanding payment for court or traffic fines. I mean, most people would just out of a little bit of fear and intimidation just pay attention to it and, you know, these frauds would do very well by their fraudulency with vulnerable people. So at a time in which unscrupulous behavior is on the rise, this pro-consumer bill will better protect Americans from becoming victims of scammers and deceitful telemarketers. And, again, I commend Congresswoman Meng for her leadership and for assembling a bipartisan group of cosponsors. That is the secret sauce around here. And I salute you for doing that, coupled with the endorsements from AARP, the major county sheriff's association, the major cities,



chief's association and Public Knowledge, which is wonderful that Public Knowledge has endorsed the bill as well.

And so, Mr. Chairman, I look forward to your proceeding with a markup of this bill, because it is an excellent one. I am also pleased to support our colleague, Mr. Latta's bill, the E-LABEL Act. That too is a bipartisan bill. And he worked with our colleagues, Mr. Welch and Ms. Blackburn in introducing that earlier this week. You explained what the E-labeling guidance issued by the FCC earlier this month does. And to promote the electronic labeling for FCC certified devices, phones, computers, smart watches, this is only going to grow, this field. And this needs an update. And I think it is an excellent one.

I have concerns with the LPTV and Translator Preservation Act. Low-powered television stations provide a very important public service in communities around the country, particularly in the rural America. And it is why as part of the Spectrum and Public Safety Act of 2012 members agreed on a bipartisan basis to preserve the spectrum usage rights of LPTV stations. But given the FCC new instructions when they are well into the design and development of the most complex spectrum auction ever conducted, I think would add unnecessary complexity, and it could dismantle—I am not saying will, but could dismantle the carefully crafted balance on other issues of importance to the subcommittee, including maximizing both licensed and unlicensed.

So thank you, Mr. Chairman. And I am looking forward to hearing the testimony of those that are here today, the distinguished first panel and the second one. And I yield the remainder of my time to Mr. Doyle.

**OPENING STATEMENT OF HON. MICHAEL F. DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA**

Mr. DOYLE. I want to thank my friend for yielding. Mr. Chairman, thank you for this hearing today. And we look forward to hearing from our colleagues.

Mr. Chairman, I want to use this short amount of time I have to just make some comments on the proposed Communication Act update. This is something that I have been monitoring with great interest, but also some concern. I know at this point that majority staff has released a number of Brief White Papers on spectrum competition and interconnection. I think these are important issues, and it is this subcommittee's duty and responsibility to address these topics. But I would say to my friend that these updates won't move forward unless you start reaching out to members and staff on our side of the aisle. These issues are real that are at stake, and there is real opportunities to make things better for the people of our country.

Mr. Chairman, I just want to use the opportunity to urge you in the most friendly and kind way that we move forward with the limited time in the session that we have over the next few months to engage our side in meaningful discussion so that we can put forward a bipartisan discussion of these issues. I thank you, and I look forward to working with you, Mr. Chairman.

Mr. WALDEN. I appreciate the gentleman's comment, would be happy to have that conversation with him at another time.

Mr. DOYLE. Great.

Mr. WALDEN. And now, all time has been expired on that side. Now, we recognize Mr. Barton for 5 minutes.

**OPENING STATEMENT OF HON. JOE BARTON, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. I don't think I will take 5 minutes, Mr. Chairman, but I do appreciate the opportunity.

There are two bills that I have been actively engaged with that are the subject of this markup today, H.R. 3670, which is the Anti-Spoofing Act of 2014, and the Low-Power TV and Translator Preservation Act of 2014. Representative Meng, who is sitting at the witness table, and I have been working closely on H.R. 3670 to modernize the Truth in Caller ID Act of 2009 to include text messaging services, IP enabled voice services and to hold foreign spoofing services accountable to the law. Due to the many conversations that we have had with various stakeholders, it would be my intention that this bill does go to markup to offer an amendment in the nature of a substitute to address some of the concerns that have come up in the stakeholder discussions.

There have been a number of spoofing incidents this year alone, one in Abilene, Texas, in my State, just last Friday when a person pretended to work for a roofing company in order to collect money up front from the customers that they were calling. Another incident, just two weeks ago, involved a Bank of America, and someone commented on the story that they received text messages from what appeared to be the Bank of America directing them to call a number concerning a problem with their own account, only to later realize that it was a scam.

The majority of the members of this subcommittee, Mr. Chairman, including yourself and Ms. Eshoo, have cosponsored H.R. 3670. So this is a bill that I think, to echo what Mr. Doyle just commented on, does have bipartisan cooperation, could move through the committee to the floor and even through the other body and to the desk of the President this year.

On the Low-Power Television and Translator Preservation Act, I am very quite frankly surprised on both sides of that one some of the strongest low-powered TV advocates are against this bill because they think it doesn't do anything. On the other side of the equation, there are people that think it goes too far and that somehow it would impact in a negative way the pending auction. The truth of the matter is that with your help, Mr. Chairman, I think we have got it just right. It does give low-powered TV license holders increased moral standing, if nothing else, in their petitions before the FCC. But as you know and I know, under current law, they don't have a guarantee. They have a secondary license which can be revoked by the FCC. If this bill does become law, they will still have a secondary license. They will not have any guarantee. But they will have the strength that—again, if this were to become law—that legislatively, the House and the Senate, as signed by the President, wants the FCC to work with low-powered TV license

holders to give them the best chance possible to maintain their viability in the marketplace.

On the Low-Power TV, Mr. Chairman, I've worked with the National Association of Broadcasters, the Advanced Television Broadcast Alliance, the National Translators Association, the National Religious Broadcasters. I have also worked very extensively with you and your staff to modify and to hopefully perfect this bill. So I do hope, Mr. Chairman, we have a good hearing. And I hope in the very near future we can go to markup on both of these bills. [The prepared statement of Mr. Barton follows:]

#### PREPARED STATEMENT OF HON. JOE BARTON

Today, I have two pieces of legislation being discussed that I have been working diligently on: H.R. 3670, the Anti-Spoofing Act of 2014, and the LPTV and Translator Preservation Act of 2014.

Representative Grace Meng and I have been working closely on H.R. 3670 to modernize the Truth in Caller ID Act of 2009 to include text messaging services, IP-enabled voice services, and to hold foreign spoofing services accountable to the law. Due to the many conversations had with various stakeholders, it would be my intention, if this bill went to a markup, to offer an Amendment in the Nature of a Substitute to address all concerns.

There have been a number of spoofing incidents this year alone to include one in Abilene, TX, reported last Friday when a person pretended to work for a roofing company in order to collect money up-front from the customers.<sup>1</sup> Another incident was reported on July 7, 2014, involving Bank of America and someone commented on the story that they received text messages from what appeared to be Bank of America, directing them to call a number concerning a problem with their account, to later realize that it was just a scam.<sup>2</sup>

I am proud to see that the majority of my colleagues on this subcommittee have cosponsored this bill, including you, Mr. Chairman, and Ranking Member Anna Eshoo, and it is my hope to see this bill move forward through the committee to have a vote taken on the House floor.

As for the LPTV and Translator Preservation Act, I am happy to have worked with you, Mr. Chairman, to highlight the LPTV industry during the incentive auction process. As current law stands, LPTV broadcasters carry a secondary license to full-power stations, which means that a LPTV broadcaster could potentially lose the spectrum they hold in the incentive auction. While this bill does not guarantee additional rights, it does provide the LPTV community with a stronger moral position and enhanced standing before the Federal Communications Commission.

I have worked with the National Association of Broadcasters, Advanced Television Broadcast Alliance, National Translators Association, and the National Religious Broadcasters on this issue. It is my belief that this bill should become law to ensure that the FCC does not easily overlook the important services offered by the LPTV industry and TV translators. I hope to see this bill move forward.

Mr. WALDEN. I thank the gentleman, who now yields to the vice chairman of the committee, Mr. Latta.

#### OPENING STATEMENT OF HON. ROBERT E. LATTI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. LATTI. Well, thank you very much to the gentleman for yielding. And thank you very much, Mr. Chairman, for holding this legislative hearing on these important bills today.

With the advancement of technology, businesses and consumers alike have reaped tremendous benefits. To ensure that consumers continue to profit from groundbreaking applications and services,

<sup>1</sup>The article is available at <http://www.ktxs.com/news/phone-spoofing-crime-surfaces-in-abilene/27017160>.

<sup>2</sup>The article is available at <http://www.azcentral.com/story/money/business/consumer/call-12-for-action/2014/07/06/debit-card-phishing-scam-call12/12275239/>.

and businesses continue to find opportunities for investment and growth, we need to make sure our laws reflect the 21st century information and communications technology marketplace.

This will not only help foster future innovation as the E-LABEL Act promotes, but it will also protect gains we have made with technologies currently employed today which the Anti-Spoofing Act and the LPTV and Translator Act address. I look forward to addressing and engaging in a closer examination on each of these bills.

And I thank the chairman, and I yield back.

Mr. WALDEN. The gentleman yields back the balance of his time. And I think now we go to—who on your side would like—would recognize for Mr. Waxman's time? Mr. Welch, do you seek any time? Mr. Doyle, any further time?

Mr. DOYLE. I don't.

Mr. WALDEN. Ms. Eshoo?

Mr. DOYLE. Let us get to our witnesses.

Mr. WALDEN. Yes. OK.

Ms. ESHOO. Good move.

Mr. WALDEN. I like the way you think. I think we are OK on our side, right? Because we have done both. So at this point now, we will go—oh, look who showed up at the witness table. It is a two-fer. A Latta two-fer. We are delighted to have both of our colleagues here today, and appreciate the good work that you have both done on these and other pieces of legislation. And so with that, we will go to panel one. And we will recognize the gentleman from Ohio, Mr. Latta, to open. And then we will go to Ms. Meng, as well.

**STATEMENTS OF HON. ROBERT E. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, AND HON. GRACE MENG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

**STATEMENT OF HON. ROBERT E. LATTA**

Mr. LATTA. Well, thank you very much, Mr. Chairman. And I greatly appreciate the opportunity to give testimony on the legislation today. I also want to thank Ranking Member Eshoo and all the other members of the subcommittee today. I appreciate the opportunity to present testimony on the bipartisan E-LABEL Act.

The Federal Communications Commission has instituted an equipment authorization program where electronic devices are required to display a physical label documenting that it has been properly certified by the Commission for commercial use. The label is also intended to provide consumers with means to readily obtain additional information about the device as efficiently as possible. While the information contained on the label serves as an important function and extends meaningful benefits and protections to consumers, the time has come for the Commission to update its rules to reflect modern technology and modify its equipment identification requirements to permit electronic labeling or E-labeling for wireless devices.

The current rule requiring physical labeling was adopted by the FCC back in the 1970s. The Commission revisited that rule in the

late 1980s, and, while it eliminated some labeling requirements, the technological capability of wireless devices at the time was admittedly not able to fully support an equipment authorization standard other than the existing physical labeling system.

As we all know, technology, especially in the wireless market, has advanced significantly since that time, and wireless devices are today equipped with numerous functionalities. They are without question able to support the modernized equipment authorization standard of E-labeling if given the option.

Permitting E-labeling would not only facilitate efforts to bring our communication laws in line with 21st century technologies, but it would also benefit both manufacturers and consumers. Manufacturers have increased flexibility to design innovative products that consumers demand. It would also reduce device manufacturers' development cost. According to the Telecommunications Industry Association, E-labeling could result in over \$80 million in saving per year for companies. Consumers in my State of Ohio and across the country would also benefit from the efficiencies created by E-labeling. E-labeling can expand consumer access to relevant device information, and enhance the overall quality and availability of equipment identification records through supporting software.

The FCC recently released guidance on E-labeling. I welcome the FCC's efforts on this issue and recognize it as an important first step in promoting the use of E-labels. The E-LABEL Act will facilitate efforts at the Commission by establishing a timeframe for moving forward with a rulemaking. This will ensure that the Commission takes timely action on this issue and resolves any uncertainty that manufacturers might have in opting to use E-labels.

We are in the midst of an innovation era where new and groundbreaking technologies and devices are introduced into the information and communications technology marketplace almost daily. Our laws need to reflect this reality.

I thank Congressman Welch, Congresswoman Blackburn and Ranking Member Eshoo for their support on this measure. I thank Chairman Walden again for the opportunity to present the testimony today on E-LABEL ACT and advance efforts to modernize our communication laws for the digital age. And I thank the chairman again.

[The prepared statement of Mr. Latta follows:]

Testimony of the Honorable Robert E. Latta  
U.S. House of Representatives

Before the U.S. House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Communications and Technology

“A legislative hearing on H.R. 3670, the Anti-Spoofing Act of 2013, H.R. \_\_\_\_,  
the LPTV and Translator Act of 2014, and H.R. \_\_\_\_, the E-LABEL Act.”

July 24, 2014

Good morning Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. Thank you for the opportunity to present testimony today on the bipartisan E-LABEL Act.

The Federal Communications Commission has instituted an equipment authorization program, where electronic devices are required to display a physical label documenting that it has been properly certified by the Commission for commercial use. The label is also intended to provide consumers with means to readily obtain additional information about the device as efficiently as possible. While the information contained on the label serves an important function and extends meaningful benefits and protections to consumers, the time has come for the Commission to update its rules to reflect modern technology and modify its equipment identification requirements to permit electronic labeling, or e-labeling, for wireless devices.

The current rule requiring physical labeling was adopted by the FCC back in the 1970s. The Commission revisited that rule in the late 1980s and while it eliminated some labeling requirements, the technological capability of wireless devices at the time was admittedly not able to fully support an equipment authorization standard other than the existing physical labeling system.

As we all know, technology, especially in the wireless market, has advanced significantly since that time and wireless devices are today equipped with numerous functionalities. They are without question able to support the modernized equipment authorization standard of e-labeling, if given the option.

Permitting e-labeling would not only facilitate efforts to bring our communications laws in line with 21<sup>st</sup> Century technologies, but it would benefit both manufacturers and consumers. Manufacturers would have increased flexibility to design innovative products that consumers demand. It would also reduce device manufacturers' development costs. According to the Telecommunications Industry Association, e-labeling could result in over \$80 million in savings per year for companies.

Consumers in my state of Ohio and across the country would also benefit from the efficiencies created by e-labeling. E-labeling can expand consumer access to relevant device information, and enhance the overall quality and availability of equipment identification records through supporting software.

The FCC recently released guidance on e-labeling. I welcome the FCC's efforts on this issue and recognize it as an important first step in promoting the use of e-labels. The E-LABEL Act will facilitate efforts at the Commission by establishing a timeframe for moving forward with a rulemaking. This will ensure that the Commission takes timely action on this issue and resolves any uncertainty that manufacturers might have in opting to use e-labels.

We are in the midst of an innovation era where new and ground-breaking technologies and devices are introduced into the information and communications technology marketplace almost daily. Our laws need to reflect this reality.

I thank Congressman Welch, Congresswoman Blackburn, and Ranking Member Eshoo for their support on this measure. I thank Chairman Walden, again, for the opportunity to present testimony on the E-LABEL Act and advance efforts to modernize our communications laws for the digital age.



Mr. WALDEN. I thank the gentleman for this testimony. And now we will go to the gentlelady from New York, Ms. Meng, for her testimony on this legislation. We appreciate your bringing this forward to us. And please go ahead.

#### STATEMENT OF HON. GRACE MENG

Ms. MENG. Chairman Walden, Ranking Member Eshoo and members of the subcommittee, thank you for holding this hearing on my bill, H.R. 3670, the Anti-Spoofing Act, which I sponsored along with Mr. Barton, Mr. Lance and seven other Republican and seven Democratic members of this subcommittee. I also thank you for inviting me to discuss the bill today. It is a great honor to appear before such an esteemed panel.

We address today the problem of caller ID spoofing, which is the scrambling of caller identification numbers. It is a tool often used to defraud unwitting recipients of phone calls and text messages.

It is often stated that the measure of a society is how it treats its most vulnerable. Almost every day, I receive new reports of caller ID spoofing that harms the most vulnerable in our society. We have reports of widespread caller ID spoofing of new immigrants, which is why USCIS recently issued a former scam alert on caller ID spoofing. And we have reports of widespread targeting of seniors, which is why the AARP wrote a letter in support of this legislation. Veterans are primary targets as well.

Caller ID spoofing is also fracturing the trust built between communities and local law enforcement, because scammers are falsely using police department's phone numbers to trick residents, as we recently heard today. For this reason, the major city's chiefs association and major county sheriff's association have endorsed this legislation.

I even saw the Chicago Tribune reported on Monday that the families of the unaccompanied minors at the border are being targeted by caller ID spoofing. I mention this not to wade into the border security debate, but rather to underscore the point that if there is a vulnerable or weak population among us, it is likely they are being targeted by caller ID spoofing.

Shortly after entering Congress, I pursued this issue because of complaints from a local civic organization and seniors in my district. But I quickly realized it is affecting Americans in all corners of our country in all of our districts. This past tax season, a huge scam was revealed whereby caller ID spoofing was used to dupe tens of thousands of Americans nationwide into thinking they were being contacted by the IRS, which they were not.

I have had very good conversations with many of you on the subcommittee about pervasive caller ID spoofing in your own districts. And I think the fact that this is playing in so many of our communities is a big reason why we have so much bipartisan support here today.

H.R. 3670 is an update to the Truth in Caller ID Act of 2009. That legislation first criminalized malicious caller ID spoofing. But since the passage of that law, scammers have used legal loopholes and new technologies to circumvent it. Thus, malicious caller ID spoofing is on the rapid rise again. So it is time to strengthen and

tighten existing law and shut down the roots by which it is being circumvented. And that is what our bill does.

There are three main parts to H.R. 3670, and I will review them briefly now. Number one, the bill broadens current law to prohibit caller ID spoofing from foreigners. This is crucial because U.S. based companies now spoof calls to U.S. residents with intent to do harm but originate such calls from outside of the United States. Two, the bill broadens current law to include new Internet based voice over IP services that enable callers to make outgoing only calls from computers and tablets to mobile and landline phones. This is a technology that was undeveloped in 2009 when the Truth in Caller ID Act was adopted, and therefore unaccounted for in that law. But it has now grown and has contributed significantly to the caller ID spoofing problem. Three, finally, our bill broadens current law to include text messaging. We all know this technology has developed, and we thus see text message caller ID spoofing with increasing regularity.

I also just want to note that current law and H.R. 3670 only pertain to caller ID spoofing with intent to defraud or cause harm. Sometimes caller ID spoofing can be applied beneficially and benignly, and we have taken great care to exclude such cases from the legislation.

In closing, I would like to once again thank the committee for considering this legislation and for giving the time of day to a freshman who is not a member of the committee. This process has been a wonderful and inspiring experience for me to take a problem I heard from my constituents and work through the legislative process in such a positive and bipartisan fashion to try and solve that problem. I would especially like to thank Mr. Barton and Mr. Lance for working with me to write this bill, Chairman Walden and Ranking Member Eshoo for all their guidance, leadership and support, and all the subcommittee cosponsors who were instrumental in bringing about consideration of this bill.

I would like to thank the witnesses who came to speak today, and of course the committee and personal staffs who have done such terrific work here. I look forward to continuing to work with the committee on this issue and legislation.

I thank you again, Mr. Chairman.

[The prepared statement of Ms. Meng follows:]

Rep. Grace Meng (NY-06)  
H.R. 3670 "Anti-Spoofing Act of 2013"; H.R. \_\_\_\_, the "LPTV" and Translator Act of 2014; and  
H.R. \_\_\_\_, the "E-LABEL Act"  
Subcommittee on Communications and Technology  
Congressional Testimony

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H.R. 3670 is an update to the Truth In Caller ID Act of 2009. That legislation first criminalized malicious caller ID spoofing. But since the passage of that law, scammers have used legal loopholes and new technologies to circumvent it; thus, malicious caller ID spoofing is on the rapid rise again. So it's time to strengthen and tighten existing law, and shut down the routes by which it is being circumvented. And that's what our bill does. There are three main parts to H.R. 3670, and I'll review them briefly now.

Firstly, the bill broadens current law to prohibit caller ID spoofing from foreigners. This is crucial because U.S.-based companies now spoof calls to U.S. residents with intent to do harm, but originate such calls from outside the United States.

Secondly, the bill broadens current law to include new internet-based Voice Over IP services that enable callers to make outgoing-only calls from computers and tablets to mobile

and landline phones. This is a technology that was undeveloped in 2009 when the Truth In Caller ID Act was adopted, and therefore unaccounted for in the law. But it has now grown, and has contributed significantly to the caller ID spoofing problem.

Finally, our bill broadens current law to include text messaging. We all know this technology has developed, and we thus see text message caller ID spoofing with increasing regularity.

I also want to note that current law and H.R. 3670 only pertain to caller ID spoofing with intent to defraud or cause harm. Sometimes caller ID spoofing can be applied beneficially and benignly, and we've taken great care to exclude such cases from the legislation.

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I'd especially like to thank Mr. Barton and Mr. Lance for working with me to write this bill, Chairman Walden and Ranking Member Eshoo for all their guidance, leadership, and support, and all the subcommittee cosponsors, who were instrumental in bringing about consideration of this bill. I'd like to thank the witnesses who came to speak today. And of course the committee and personal staffs who have done such terrific work here. I look forward to continuing to work with the committee on this issue and legislation. Thank you.

Mr. WALDEN. Ms. Meng, thank you for bringing this to our attention and working with our committees and our staffs on both sides of the aisle to move good public policy forward, and we appreciate what you have done.

We want to thank you both for being here. We actually won't grill you. That is our normal procedure, to let Members come and make their case and depart. So thank you for being here, and thanks for bringing this to us.

We will now move on to the second panel while you two depart. Mr. Louis Libin, did I say that correctly?

Mr. LIBIN. Yes.

Mr. WALDEN. Thank you. Executive Vice President, Advanced Television Broadcasting Alliance, and Mr. Harold Feld, Senior Vice President, Public Knowledge. We welcome both of you gentlemen here to testify this morning. And just bring those microphones close. That is kind of how they work. And push the button. And, Mr. Libin, we will start with you. And thanks again for being here.

**STATEMENTS OF LOUIS LIBIN, EXECUTIVE DIRECTOR, ADVANCED TELEVISION BROADCASTING ALLIANCE, AND HAROLD FELD, SENIOR VICE PRESIDENT, PUBLIC KNOWLEDGE**

**STATEMENT OF LOUIS LIBIN**

Mr. LIBIN. Chairman Walden and Ranking Member Eshoo and distinguished members of the subcommittee, my name is Louis Libin. I am the Executive Director of the Advanced Television Broadcasting Alliance, which is comprised of hundreds of low-powered television, or LPTV, broadcasters and owners and operators of translators. Thank you very much for the opportunity to testify regarding the impact of the planned broadcast incentive auctions on LPTV stations, translators and boosters. In particular, I appreciate the efforts of Chairman Barton to develop the LPTV and Translator Preservation Act, which will require the FCC to consider the great benefits of LPTV and translator stations, rather than indiscriminately eliminating their licenses without any consideration of the value these stations provide to underserved communities.

LPTV service was created to enhance diversity by allowing more unique voices to provide free, over the air television service. LPTV stations address the needs of minorities, women, ethnic communities, the elderly, children and other underserved populations. They also broadcast in rural areas where full-power stations sometimes are not commercially viable. Translators extend the reach of broadcast stations into isolated areas. More than 5,000 LPTV stations and translators serve tens of millions of Americans. In many places, these stations are the only broadcast television service available, and they often provide communities their only access to the affiliates of major broadcasting networks. Many translators were built and are operated by local communities to bring broadcast television to their citizens.

A third or more of the LPTV and translator stations are now at risk of being shut down by the FCC as it conducts the incentive auction. As you know, the 2012 Congress authorized the FCC to conduct an incentive auction of broadcast spectrum. The 2012 Spectrum Act expressed a fundamental principle about spectrum use

that spectrum allocation should reflect market demand. Unfortunately, the FCC's auction plan does not reflect this core principle. The FCC gives no consideration at all to the value of the service provided by LPTV and translator stations.

Because the FCC does not have to share proceeds of the auction with LPTV or translator stations, those stations are simply free spectrum in the eyes of the FCC. From the perspective of the auction itself, there is no cost to eliminating LPTV and translator service. Under the FCC's auction rules, the FCC could cancel hundreds or even thousands of LPTV and translator licenses, even if doing so would not generate a single dollar in additional revenue for the auction. The FCC could eliminate LPTV and translator stations just for the sake of running the auction faster or with less precise calculations, or for the sake of completing the auction in less than half the 10 years Congress authorized. And that is exactly what the FCC is doing. It has adopted rules that run the auction at breakneck speed, with literally no consideration at all of the impact on citizens served by LPTV and translator services.

This is not a market mechanism. It is a pointless, tragic destruction of value, jobs, diversity, localism and rural service. The FCC could shut down thousands of LPTV and translator stations to give wireless carrier spectrum in rural areas that they do not need, and likely will never use. The FCC's incentive auction order also treats low-powered television stations as secondary, even to unlicensed services. Congress did not authorize the FCC to elevate unlicensed services over licensed LPTV and translator services. While the economic costs of the FCC's approach will be born most directly by the licensees, the public served by these critical facilities is the big loser. The TV stations that air local high school football games, provide ethnic and foreign language programming, provide church services and weather alerts, and bring network programming into rural areas that are already underserved will all be gone without any consideration of the value lost to millions of Americans, and regardless of whether the market actually demands additional wireless spectrum in those areas.

While LPTV and translator operators and their audiences would like to see much more done, the LPTV and Translator Preservation Act is a step in the right direction. We are very thankful for the support Chairman Barton has given to Americans who rely on LPTV and translator service. Thank you very much again for the opportunity to testify.

[The prepared statement of Mr. Libin follows:]

**Testimony of Louis Libin**  
**Executive Director, Advanced Television Broadcasting Alliance**  
**Before**  
**House Committee on Energy and Commerce**  
**Subcommittee on Communications and Technology**  
**Legislative Hearing on the Anti-Spoofing Act, the LPTV and Translator Act,**  
**and the E-LABEL Act**  
**July 24, 2014**

**SUMMARY OF MAJOR POINTS**

- LPTV service was created to enhance diversity by allowing more unique “voices” to provide free, over-the-air television service. More than 5,000 LPTV and translator provide television service to tens of millions of Americans. In many places, these stations are the only broadcast television service available, and in many other cases, they provide communities their only access to the affiliates of major broadcast networks. LPTV and translator services are “secondary” to full power broadcast services: they may not cause interference to full power stations and must accept interference from full power stations.
- A third or more of LPTV and translator stations are now at risk of being shut down by the FCC because of the manner in which it has decided to conduct the broadcast incentive auction.
- The 2012 Spectrum Act expressed a fundamental principle about spectrum use: that spectrum allocations should reflect market demand. But the FCC’s approach to the auction does not reflect that core principle. The FCC has is giving no consideration at all to the value of the service provide by LPTV and translator services. Because the FCC does not have to share proceeds of the auction with LPTV or translator stations, those stations are simply “free” spectrum in the eyes of the FCC. From the perspective of the auction itself, there is no cost to eliminating LPTV and translator service.
- The FCC could cancel hundreds or even thousands of LPTV and translator licenses even if doing so would not generate a single dollar in additional revenue for the auction. The FCC could eliminate LPTV and translator stations just for the sake of running the auction faster or with less precise calculations, or for the sake of completing the auction in less than half of the ten years Congress authorized.
- Far from a market mechanism, the FCC approach is a pointless, tragic destruction of value, jobs, diversity, localism and rural service. The FCC could shut down thousands of LPTV and translator stations to give wireless carriers spectrum in rural areas that they do not need and likely will not use.
- While more work is needed, we greatly appreciate Chairman Emeritus Barton’s work on the LPTV and Translator Preservation Act, which is an important first step.



**Testimony of Louis Libin**  
**Executive Director, Advanced Television Broadcasting Alliance**  
**Before**  
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**July 24, 2014**

Chairman Walden, Ranking Member Eshoo, and distinguished members of the Subcommittee, my name is Louis Libin. I am the Executive Director of the Advanced Television Broadcasting Alliance, which is comprised of hundreds of low-power television (“LPTV”) broadcasters, owners and operators of translators, and allied industry organizations and companies.

Thank you very much for the opportunity to provide testimony regarding the impact of the planned broadcast incentive auctions on LPTV stations, translators and boosters. In particular, I appreciate the efforts of Chairman Emeritus Barton to develop a bill, the LPTV and Translator Preservation Act, which will require the FCC to consider the great benefits of LPTV and translator stations, rather than indiscriminately eliminating their licenses without any consideration of the value these stations provide to under-served communities and population segments.

**About LPTV and Translator Service**

LPTV service was created to enhance diversity by allowing more unique “voices” to provide free, over-the-air television service. LPTV stations operate with lower power and service smaller areas than full power stations. LPTV stations address the needs of minorities, women, ethnic communities, the elderly, children and other underserved populations. They also broadcast in rural areas where full power stations sometimes are not commercially viable.

Television translators are technically just like LPTV stations. But instead of originating programming, they extend the reach of broadcast stations into rural and geographically isolated areas that are not adequately covered by a full power signal.

More than 2,000 LPTV stations and more than 3,000 translators provide television service to tens of millions of Americans. In many places, these stations are the only broadcast television service available, and in many other cases, they provide communities their only access to the affiliates of major broadcast networks. Many translators were built and are operated by local communities to ensure that those communities have access to broadcast television.

LPTV and translator services are “secondary” to full power broadcast services: they may not cause interference to full power stations and must accept interference from full power stations.

**Impact of FCC Incentive Auction on LPTV and Translator Stations**

A third or more of LPTV and translator stations are now at risk of being shut down by the FCC as it conducts the incentive auction. Many more may shut down because they cannot afford the cost of transitioning to a new channel. Because of the way translators operate, the loss of a license for one translator could mean 10, 20 or more other translators cannot be operated economically. So the full impact is likely to be far worse than the simple number of translators eliminated.

As you know, in 2012 Congress authorized the FCC to conduct an “incentive auction” of broadcast spectrum. Willing broadcast stations could relinquish their licenses in exchange for a share of the proceeds of an auction of new wireless broadband licenses. The 2012 Spectrum Act expressed a fundamental principle about spectrum use: that spectrum allocations should reflect market demand.

In June of this year, the FCC released its first significant order describing how it intends to implement the broadcast incentive auctions. Unfortunately, that order does not reflect the core principle of allocations according to market demand and is driven by reasons not fully attributable to the intent of Congress. The FCC has adopted rules that give no consideration at all to the value of the service provided by LPTV and translator services. Because the FCC does not have to share proceeds of the auction with LPTV or translator stations, those stations are simply “free” spectrum in the eyes of the FCC. From the perspective of the auction itself, there is no cost to eliminating LPTV and translator service.

Under the FCC’s auction rules the FCC could cancel hundreds or even thousands of LPTV and translator licenses even if doing so would not generate a single dollar in additional revenue for the auction. The FCC could eliminate LPTV and translator stations just for the sake of running the auction faster or with less precise calculations, or for the sake of completing the auction in less than half of the ten years Congress authorized.

And that is what the FCC is doing. It has adopted rules that run the auction at a breakneck speed with, literally, no consideration at all of the impact on citizens served by LPTV and translator services. The rules reallocate LPTV spectrum to wireless carriers without assigning any value at all to the LPTV and translator services that would be eliminated.

This is not a market mechanism. It is a pointless, tragic destruction of value, jobs, diversity, localism and rural service. The FCC could shut down thousands of LPTV and translator stations to give wireless carriers spectrum in rural areas that they do not need and likely will not use.

The FCC’s incentive auction order damages LPTV and translator services in other ways. For example, although those services are secondary to full power broadcast stations, the FCC’s

order treats low power stations as secondary even to unlicensed services. Congress did not authorize the FCC to elevate unlicensed services over licensed LPTV and translator services.

While the economic costs of the FCC's refusal even to consider preservation of LPTV and translator service are borne most directly by the licensees, the public served by these critical facilities is the biggest loser. The TV stations that air local high school football games, provide ethnic and foreign language programming, provide church services and weather alerts, and bring network programming into rural areas that are already underserved – will all be gone without any consideration of the value lost to millions of Americans.

#### **Conclusion**

While LPTV and translator operators and their audiences would like to see much more done, the LPTV and Translator Preservation Act is a step in the right direction.

We are very thankful for the support Chairman Emeritus Barton has given to Americans who rely on LPTV and translator service. We appreciate his support for these hometown businesses that serve their communities with local programming, ethnic programming, local church services, weather alerts, and programming for linguistically isolated audiences, and that extend the reach of full power, network affiliated stations into unserved rural areas.

Again, thank you for the opportunity to testify at today's hearing and for your work on this important issue for Americans who rely on LPTV and translator service.

Mr. WALDEN. Mr. Libin, thank you. And go ahead and turn off that microphone. We appreciate your being here. We appreciate your testimony on this important matter.

Mr. Feld, we welcome you to this discussion. Please go ahead.

#### **STATEMENT OF HAROLD FELD**

Mr. FELD. Thank you, Chairman Walden and Ranking Member Eshoo. Thank you very much for inviting me to testify today.

I want to start by voicing my strong support for both the Anti-Spoofing Act and the E-LABEL Act. These bills provide necessary updates the Communications Act, and Public Knowledge supports their swift consideration and passage.

But while I agree with the principles behind the LPTV and Translator Act, I strongly recommend against consideration of this bill. Consideration of this bill creates needless uncertainty and delay around the broadcast incentive auction. I say needless because the FCC is already committed to doing precisely what this bill tells it to do. As I have said many times over the last 4 years, and as you have heard from others, the broadcast incentive auction poses enormous challenges for the FCC. The difference in complexity between the incentive auction and the first spectrum auctions conducted by the FCC in 1994 is like the difference between the cell phones of 1994 and the smart phones of today. But instead of the gradual evolution over 20 years we had in phone technology, we are asking the FCC to jump from the auction equivalent of a brick phone to the auction equivalent of an iPhone.

Adopting this bill will create new delay at a time when the auction framework finally appears to be coming together. After nearly 2 years of contentious debate involving some of the most renowned spectrum auction experts in the world, hundreds of engineers and thousands of stakeholders, the FCC adopted a framework for the auction in May. While much work remains to be done, we have reached the point where the FCC can set a timeline for the remainder of the process, and stakeholders can have confidence the auction will take place.

Importantly, the FCC can begin building the entirely new auction software and hardware needed to make all the many pieces of this auction work together in real-time. But we can only move forward from here if all stakeholders have confidence that the framework adopted in May is a stable foundation on which to build, which brings me back to the LPTV bill. Despite efforts to limit the bill's scope, questions will reverberate throughout all aspects of the auction. Imagine a row of wine glasses packed tightly together. Tap one, and the rest start to hum as the vibrations ripple out. So to, implementation of the LPTV Act would reverberate through the entire auction framework. For example, the FCC will need to consider whether the bill's command to avoid terminations of LPTV and TV translator license where possible impacts the auction and repackaging design, or whether reduction in projected revenue would be an adverse impact on the auction. These questions implicate the repackaging as a whole, the band planned, and nearly every other key element of the auction design everyone thought we already settled. Work on the new auction software and hardware will slow or stop entirely until these questions can be settled again.

And what is the urgent need that justifies this new delay and uncertainty? At the moment, none. The FCC is already committed to doing precisely what the bill requires. As part of the framework adopted in May, the FCC explicitly recognized the importance of LPTV and TV translator services, and committed to completing a further notice of proposed rulemaking to ameliorate the impacts of the auction. Given that the FCC appears to be on the right course, there seems no reason to introduce new potential devastating, uncertainty and delay.

To conclude, the importance of localism and diversity in broadcasting is a value that no one questions. Localism and diversity have been the fundamental foundation of our national broadcast policies since Congress passed the Federal Radio Act in 1927. LPTV and TV translator licensees are important parts of that ecosystem, as the FCC continues to recognize. No one wants to eliminate licensees providing valuable services to their local communities. I may add that just last week before this bill was introduced, I and other members of the public interest spectrum coalition were present at a meeting with the FCC staff, and we once again urged the FCC to consider means to allow LPTVs to transition smoothly, including voluntary reduction in power, precisely the mechanism that the bill recommends.

There is broad support for continuing service of LPTVs and translators, consistent with the direction that Congress gave to the Commission in the Spectrum Act of 2012. Passing new legislation, even if it is only intended to reinforce what the FCC is already committing to do, will reintroduce new uncertainty and delay at precisely the wrong time.

Thank you. And I look forward to your questions.

[The prepared statement of Mr. Feld follows:]



Testimony of Harold Feld  
Senior Vice President  
Public Knowledge

Before the  
U.S. House of Representatives  
Committee on the Energy and Commerce  
Subcommittee on Communications and Technology

Hearing On:  
The Anti-Spoofing Act, The LPTV and TV Translator Act,  
and the E-LABEL Act

Washington, DC  
July 24, 2014

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Hearing on “The Anti-Spoofing Act, The LPTV and TV Translator Act, and the E-LABEL Act”  
July 24, 2014

Chairman Walden, Ranking Member Eshoo, thank you very much for inviting me here to testify today.

I am pleased to see this Subcommittee take up both the Anti-Spoofing Act and the E-LABEL Act. The Anti-Spoofing Act closes a loophole in existing law that has allowed scammers to prey on consumers by providing deceptive caller ID information for calls made outside the United States, and clarifies the extension of the law to texting and texting services that use phone numbers. Public Knowledge is pleased to support this pro-consumer legislation and urges swift passage.

Similarly, Public Knowledge is pleased to support the E-LABELING Act. This update to the Communications Act will continue to provide needed information so that purchasers of FCC devices can be assured that these devices comply with necessary regulations, while reducing manufacturing costs.

Unfortunately, Public Knowledge cannot support the third bill under consideration, the LPTV and TV Translator Act of 2014. Public Knowledge generally agrees with the sentiments



expressed in the bill that LPTV and TV translators provide valuable service to their local community. Furthermore, as we read the pending legislation, it essentially recapitulates the existing FCC responsibility to consider the “public interest, convenience and necessity” when making decisions with regard to the assignment of licenses. Nevertheless, as I explain below, because of the delay and potential confusion that any new legislation would engender, we recommend that Congress take no further action on the Incentive Auction at this time.

**The First Incentive Auction Ever Held Is Widely Recognized As One Of The Most Difficult and Complicated Challenges Ever Faced By The Federal Communications Commission**

This Committee has held numerous hearings on the Incentive Auction since the FCC first proposed the concept in 2010 as part of the National Broadband Plan.<sup>1</sup> I have had the privilege of testifying before this Committee on several occasions as you developed the concept of the Incentive Auction, incorporated it into the Middle Class Tax Relief and Job Creation Act of 2012,<sup>2</sup> and overseen its implementation by the FCC. At all of these hearings, I and other witnesses have emphasized the enormous challenge of this undertaking. No other country in the world has ever conducted an incentive auction, which requires that the FCC run two complex and interrelated auctions simultaneously. To conduct this auction successfully, the Commission must also simultaneously calculate how full power and Class A LPTV broadcast licensees can be “repacked” post-auction.

This repacking calculation is made even more difficult by the balance struck in the legislation between maximizing spectrum for auction and protecting those full power and Class

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<sup>1</sup> See Federal Communications Commission, “Connecting America: The National Broadband Plan” (2010), Section 5.3 at 84. Available at: <http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (last visited July 23, 2014).

<sup>2</sup> Pub. L. 112-96 §§6401-14 (“2012 Spectrum Act”).

A licensee that does not want to continue broadcasting using all or part of their existing 6 MHz spectrum allocation. These broadcasters cannot be repacked on Channels 2-6 without their express permission (and subject to compensation for migrating into the less desirable VHF bands). The FCC must make every reasonable effort to protect their existing viewing area. Finally, the FCC must seek to reduce the cost to broadcasters for their migration to, at a minimum, fit below the statutorily imposed cap of \$1.75 billion. The FCC is further incented to reduce the cost of migrating broadcasters so that auction revenue can be directed to other purposes designated by the 2012 Spectrum Act, such as FirstNet and deficit reduction.

This enormously complicated undertaking has required nearly two years of deliberation at the agency to produce the Incentive Auction framework adopted by the Commission in May.<sup>3</sup> In the process, the FCC has consulted with thousands of stakeholders and the public. The FCC has supplemented its internationally renowned auction team with some of the most respected names in auction theory to develop the complex bidding methodologies required to run both auctions and the repacking simultaneously. The FCC has invested tremendous resources in developing and testing the new auction and repacking software that the incentive auction will require.

Finally, as if all this were not complicated enough, each variable in this equation impacts all other variables. Any change in repacking rules impacts the auction rules by potentially freeing more or less spectrum or creating the potential for unknown neighbors and additional costs. Any changes to the repacking software must be reflected in changes to the Forward Auction software and the Reverse Auction software. Potential participants on either side will adjust their

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<sup>3</sup> Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268 (Rel. June 2, 2014) (*"Incentive Auction Framework Order"*). Available at: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0627/FCC-14-50A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0627/FCC-14-50A1.pdf) (last visited July 23, 2014).

willingness to participate and the prices they will pay (or demand) based on the availability of the spectrum subject to all these dependent variables.

### **Congress Should Not Introduce New Uncertainty With New Legislation**

On May 15, the FCC adopted the *Incentive Auction Framework*. The framework identified further notices of proposed rulemaking to resolve outstanding issues. In addition the FCC published an anticipated timetable so that potential auction participants could begin the lengthy planning and preparation process necessary for a successful auction.<sup>4</sup> As part of the *Incentive Auction Framework*, the FCC recognized the important service that LPTV licensees and TV translators provide to their local communities and committed to conducting a *Further Notice of Proposed Rulemaking* to mitigate the impacts of the auction on these services.<sup>5</sup>

By adopting the *Incentive Auction Framework* and the proposed timetable, the FCC has instilled confidence that the auction will move forward in a timely and successful manner. Throughout this long and complicated process, the general mood in the stakeholder community has shifted back and forth between optimism and pessimism. Too often, as the incentive auction made its journey from initial concept in the National Broadband Report to adoption of the *Incentive Auction Framework*, it appeared that the sheer number of competing interests and the unprecedented complexity of the task would cause the auction to collapse under its own weight. While not everyone was pleased with the final *Incentive Auction Framework*, virtually all stakeholders agreed it was time to make decisions and move forward. After the May meeting, the

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<sup>4</sup> FCC, “Estimated Timeline of Key Events Leading Up to FCC’s Broadcast Incentive Auction,” available at: [http://wireless.fcc.gov/incentiveauctions/learn-program/Incentive\\_Auction\\_Timeline.pdf](http://wireless.fcc.gov/incentiveauctions/learn-program/Incentive_Auction_Timeline.pdf)

<sup>5</sup> *Incentive Auction Framework* at ¶237.

expectation in the stakeholder community is that we *will* have an auction and it *will* be a success. While many things could still go wrong, we finally have a roadmap to guide us and a schedule to keep us on track.

If Congress passes the proposed legislation, it will introduce significant delay and uncertainty into the auction process. The FCC will be forced to consider how the new law impacts the repacking process. Despite clear direction that the proposed bill does not alter the rights of full power broadcasters and Class As, the FCC will nevertheless need to entertain comments and arguments from stakeholders on how the new statutory language does or does not alter the FCC's previous determinations or influence how the FCC should conduct the repacking. For example, does the passage of a new law mean that Congress rejects the calculus the FCC made to minimize the cost of repacking, and that the FCC should therefore rewrite the repacking software to maximize availability of space for LPTV and translator licensees regardless of the cost to the auction or to full power broadcasters? Nothing in the statute officially requires such an outcome, but the fact that Congress passed a new law drawing attention to the importance of LPTV and translator services will give rise to such arguments.

Worse, because all the factors are interrelated, the ripple effects of reopening this part of the repacking potentially reopen other aspects of the balance struck in the *Incentive Auction Framework*. As the FCC contemplates changes, it will hear from other stakeholders concerned about the impact on related elements of the auction. As the potential issues multiply, more parties will feel the need to participate, further confusing and delaying the issue. Some stakeholders will see this as an opportunity to re-litigate even entirely unrelated issues. Stakeholders will argue that if the FCC must consider changes based on the new legislation

(regardless of whether it adopts them), why not consider other “minor” or “technical” changes as well?

Once Congress requires the FCC to revisit decisions already made, however much Congress may try to limit the inquiry, the complicated and interrelated nature of the auction ensures the scope of the inquiry will spread well beyond what Congress intended. At best, the proposed legislation would create several months of uncertainty and delay just when the auction seems to have found its footing. Even in this best-case scenario, new legislation risks undermining the confidence of stakeholders that the auction will take place in a timely and successful way. At worst, Congress’s determination to force the FCC to revisit the LPTV and TV translator issues becomes the proverbial pebble that starts the avalanche, reopening a complicated and interrelated framework to a fresh round of endless bickering that may crash the chances for a successful auction for the foreseeable future.

**Congress Has No Need To Pass Legislation At This Time.**

The FCC has already recognized the valuable service that LPTV and TV Translators offer to their communities. It has pledged to conduct a Further Notice of Proposed Rulemaking to alleviate the impact on these services, consistent with the *Incentive Auction Framework*. Although the FCC has not committed to consideration of a voluntary reduction in power by LPTV licensees to facilitate efficient repacking, parties such as Public Knowledge have suggested this and other innovative ways in which the FCC can ensure that the LPTV and TV

translator services continue their historic role of enhancing localism and diversity in accordance with the policies of the Communications Act and the purpose of these services.<sup>6</sup>

Congress can, and should, continue to exercise oversight of the FCC and to continue to review its ongoing processes. But there is no evidence at this stage that the FCC does not already plan to consider everything the pending legislation asks it to consider. To the contrary, the FCC's longstanding recognition of the value of these services, and support for licensees that serve their local communities from a broad array of stakeholders (including Public Knowledge) should provide strong reassurance that the FCC will do what it can to ameliorate the impact of the incentive auction consistent with the direction given by Congress in the 2012 Spectrum Act. Through the traditional oversight process, Congress can ensure suitable protection for these services without disrupting or delaying the Incentive Auction itself.

### CONCLUSION

Last week marked the 45<sup>th</sup> Anniversary of the Apollo 11 landing on the Moon. While no one imagines that the Incentive Auction constitutes a “giant leap for mankind,” the Incentive Auction does share many characteristics of this and other “moon shots.” The Incentive Auction represents an ambitious leap forward into untested waters for spectrum policy in the same way that the Apollo program represented a new evolution in rocketry. Complicated, interrelated problems must all be solved simultaneously to ensure success. And, at times, the sheer complexity and scale of the project seems overwhelming.

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<sup>6</sup> See Letter of Michael Calabrese, Director, Wireless Future Project, Open Technology Institute, New America Foundation to Marlene Dortch, Secretary, Federal Communications Commission, submitted in Docket No. 12-268 at 4 (submitted July 21, 2014).

No one doubts the value of LPTV and TV Translators. To the contrary, the FCC and a broad array of stakeholders have all recognized that value. But even if the legislation is no more than an effort to re-affirm this value, now is not the time to introduce new uncertainty and potential delay into an already difficult and complex project of such scale and scope. If we want the Incentive Auction to launch successfully and on schedule, Congress should not pass this bill.

Thank you to the members of the subcommittee for your time and I look forward to the opportunity answer your questions.

Mr. WALDEN. Thank you, Mr. Feld. You have far more confidence in the FCC than I do. But then I understand why.

I want to ask a couple of questions, because this really matters to the public, to consumers in districts like mine, not only in rural areas, but urban areas. And I have met with a lot of these folks who have LPTV and low power. They serve minority populations in many cases with specialty programming. And my message here, and I think it is shared by Mr. Barton, is I don't want a runaway FCC that simply squishes them because they can and takes them out. I am also not going to give them full-power authority, because they didn't have that to begin with. But I think you are over the top in terms of kind of this notion you are going to blow up the whole auction, because you actually admit that the FCC is headed down this path anyway. I am reinforcing that. I was hoping to have a lot more faith in this FCC. But I am seeing some really bad behavior from the top down where Republican commissioners are kept out of the loop, where there is a process failure. I don't think this hearing is going to get into this. But I just think you are over the top, and I am just going to tell you that.

In places like my district, these translators are really important. They really are. And I want to send a clear message without screwing up the auction that they need to be thoughtful about this, whether it is in a rural area or an urban area. There are a lot of people served. And you can have a band plan that squishes out just for the sake of getting more spectrum available for the big companies that want to buy it. And I think we have got to be thoughtful about the public spectrum and how it is used and how it is allocated.

Now, Mr. Libin, a number of your colleagues in the LPTV community have also expressed opposition to this bill, I think for other reasons, and have suggested they would rather have no bill than this bill. Could you explain why some LPTV providers feel this way?

Mr. LIBIN. I think that they are concerned that by opening this door it is going to bring discussions on LPTV and the auction and take it in places back to the FCC where it may not have the conclusions that they want. For example, there is an NPRM, a Notice of Proposed Rulemaking, on LPTV coming up. But that is really just a mechanism to talk about how essentially the FCC has plans to shut down these stations. It is surely not a mechanism to help LPTV. The LPTV industry I have to tell you is very different than the big broadcast industry. Actually, I come from NBC. I am used to coming with big contingencies. The LPTV industry is an industry of typically mom and pops. They are small businesses. Not that they don't employ people. They all employ a lot of people.

Mr. WALDEN. Right.

Mr. LIBIN. We are not talking about eliminating thousands. It is still a lot of people. But this is the other—essentially, there may not be unity in the community, but it is becoming—

Mr. WALDEN. We are aware of that.

Mr. LIBIN. But it is becoming more and more. I believe that the industry is tightening up. I mean, you can see just in the past few months, we now have the NAB is our partner, and we have the National Translator Association. And we are working with the NRB.



So I think we are really finding the commonality that we need. But it is a small industry.

Mr. WALDEN. OK. That is the only questions I have. I will now yield back the balance of my time, recognize my friend from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. And thank you to both Mr. Libin and Mr. Feld.

It seems to me I think I probably have more an observation after listening to the testimony and, of course, reading the—you know, the staff memo that there are some issues to be dealt with here. And I think it is a question of how it is done. I think it is a question of how it is done and how we thread the needle.

We had a chance to chat before as I came into the hearing room a little earlier this morning. And you were talking about rural areas and then said the Bay Area. The Bay Area doesn't have a lot of rural areas, but it does have some. And I asked you what you were referring to.

Mr. LIBIN. The South City.

Ms. ESHOO. What you were referring to is not rural. It is a heavily populated area. It is the northern part of San Mateo County, the county that I live in, just outside the city and county of San Francisco and very close to San Francisco International Airport. And there—it is the largest Filipino-American community outside of the Philippines that resides in that area. So there are issues here and communities of interest that we need to look after. We are not looking to do something where there would be a loss of jobs or, very importantly, the communications that these communities of interest rely on.

I don't think you have a case for completely rewriting the whole thing, to tell you the truth. And—but I do think that we need to work so that what I just mentioned and—or outlined as to the chairman that we thread this needle so that those two elements are not disrupted. I appreciate Mr. Feld's testimony. I love it when people come here and feel strongly about things. I really do, even when I disagree with them. I mean, it is the place to do that.

And so I thank you for that. I do have the concern that, you know, we are what, now almost 2 years into the planning for the spectrum auction? And it is the first time in the history of our country—actually, in the world that this kind of auction is going to take place. So we are not—none of us want to throw sand in the gears. And I think that is what you are talking about. And the chairman has his misgivings about the agency and its jurisdictions and how they do things. I have I think more confidence than he does. But be that as it may, I don't want anyone squashed in this either, because I think we need to look after these important communities in our country. So I think more than anything else that we have got some work to do to refine this.

I really don't have questions to ask you. I think the chairman already asked you, Mr. Libin, what I was going to ask. And, Mr. Feld, thank you for being here and for what you have focused on. And you always come here with a lot of passion. And I love that. I love it. So I think that we have some work to do together on this to help resolve some of the issues that the—we not throw sand in the gears relative to the auction, but that we recognize that there

are communities of interest that are really reliant on this. And I don't think, Mr. Libin, you are going to get everything you want. But you know what? No one does around here. So if we can resolve it the way I think we're both describing it, then we will have accomplished something.

I yield back.

Mr. WALDEN. The gentlelady yields back the balance of her time. I turn now to the former chairman of the committee, Mr. Barton, for 5 minutes.

Mr. BARTON. Well, thank you. And I appreciate the testimony of both of you gentlemen. I appreciate the comments of Ms. Eshoo and our chairman.

I am going to go back to the story of Goldilocks and the Three Bears. There are probably some of the younger people don't get those stories anymore, but I am of an age that I remember those when I was a child. And there were three bowls of porridge. And one bowl was way too hot, and so one of the bears says it is too hot. And another bowl was way too cold, and the second bear said well, it is too cold. But then the third bowl, the middle bear said it is just right.

Now, our Bill that is three pages—three pages—really just two pages. I am going to read the relevant portion, because this is one of these things that average people, and even members of Congress, can actually understand, you know? It is low-powered television translator and television booster stations, A, in general—now this is for the people that says it is too cold. OK? Nothing in this subsection shall be construed to alter the spectrum usage rights of low-power television stations, television translator stations or television booster stations shall be construed to alter the spectrum usage rights. This bill doesn't give them any new rights. OK? It doesn't give them any new rights.

Now, B, preservation. And here the keyword is the third word, the Commission shall, s-h-a-l-l, shall, s-h-a-l-l, shall, one, in general, consider the benefits of low-power television stations, television translator stations and television booster stations to the communities of license of such stations consider the benefits. So it says the FCC has to consider the benefits. Two, where possible, avoid the termination of the low-power television station, television translator station or television booster station as long as such avoidance does not adversely impact the reverse auction under Subsection A(1) or the forward auction under Subsection C(1). And, three, after the completion of the reassignments and reallocations under paragraph 1(b), permit any low-power television station, television translator station or television booster station to request to operate at reduced power or from a different transmitter location consistent with the Commission's rules of such station or otherwise lose its license as a result of such reassignment or reallocation.

So what this does, it says the FCC shall, if possible, preserve the termination of the low-power television station. So it does give increased standing. But that is all. The FCC still can make the decision, and it cannot impact the reverse auction. You know, Section A guarantees that. So with all due respect to Mr. Feld, I think this bill is just right. It elevates low-power television's standing before the FCC. They have to consider these things. But once they have

considered them, you know, they can't let it adversely impact the auction, and they go forward. So, you know, this is one of those bills where it is funny to see some people in the industry itself saying, oh, this thing doesn't do anything, doesn't go far enough. Well, you can't give a right that they don't have now. But on the other hand, to have Mr. Feld and his folks, oh, it is going to hold up the auction. Oh, my God, you know? Well, what the hey? It just says they have to consider these things.

Mr. WALDEN. Would the gentleman yield?

Mr. BARTON. I would be happy to yield.

Mr. WALDEN. I think the last part is also really important. It says if after all—everything is said and done after the auction, if there is another way for them to survive, they should have the right to apply for that, different location, different power, different whatever. And I think that is the survival lifeline.

Mr. BARTON. Yes. So, you know, every now and then, Congress breaks out in commonsense. This is a commonsense bill. It really is. Now, my good friend, Anna Eshoo, if she has really got concerns about this, let me know. We will work with you. But these stations have real value. But under the current law, it is not considered. And instead of just letting the FCC do whatever the heck they want, this bill at least says hey, you have got to consider these things. And I think that is fair. I think it is the right thing to do. And I think it will result in a better process. As Mr. Libin pointed out, you know, why should you give an unlicensed operator operating a wide space more authority than somebody who at least has a secondary license? This bill does that. And I hope we can pass it on a bipartisan basis.

Thank you for the courtesy.

Mr. WALDEN. Thanks for working with us. And we appreciate your passion and your involvement in this issue. It is very important. I now turn to the gentleman from Iowa, Mr. Braley.

Mr. BRALEY. Thank you, Mr. Chairman. I could have sworn, Mr. Chairman, that Mr. Barton was going in another direction with that fairy tale. I thought it was going to be Little Red Riding Hood. And I was just waiting for whom the big bad wolf was going to be, so I feel somewhat let down.

Mr. BARTON. I am saving that for full committee.

Mr. BRALEY. But I think as we talk about these issues, which are important issues, it is also important to look back over the history of telecommunications. Because it is not the LPTV stations but the UHF stations that have served a more limited audience in remote areas of the country and often were in the vanguard of some of the innovation and technology in the industry. I happen to represent a UHF station in Dubuque, Iowa, which was in the vanguard of cable television because it was located on the bluffs of the Mississippi River. They had a hard time getting over the air signals from more conventional VHF stations. And through the work that was done there decades ago, the basic foundation for what we now know as cable television started to emerge in communities around the country. And since this spectrum is held in the public interest, I think it is important for us to keep that focus on those who have gone before and have led us down paths of innovation that provide the incredible array of services we now get over the spectrum.

So I guess for the panel, my question for you both is in light of some of the comments that have been made here today, in light of how people are served across the country through these current LPTV stations, what are the biggest risks and the biggest rewards you see from moving forward with the legislation as it is currently drafted?

Mr. FELD. Well, first, I would just like to address one misconception that I have now heard a couple of times, which is with regard to the relationship between LPTVs and unlicensed. It is important to realize that what the Commission has done is tried to balance things. And in fact, what the Commission did was to sort of merge wireless microphones, which are another secondary wireless service associated with broadcasting, and regarded as critical with broadcasting, with the unlicensed and say these are smaller transmitters, they operated in a way that is consistent with each other, we will have them share some space. And then over here, with the larger fixed transmitters, the LPTV and the translators, we will have a different question as to how we try to fit them in the intricacies of the repacking. So the FCC was very careful to not revisit its existing hierarchy. But what it has done is what Congress has directed it to do, which is balance many interests. In that light, I think that there is a tremendous opportunity here for the LPTV service as part of this transition through the incentive auction. It is true that the LPTV service has fallen on very hard times for a number of reasons, many of which are not related to the incentive auction but have to do with the digital transition, with the fact that they do not have must-carry rights on cable. I used to work with this community a lot some years ago when I was at Media Access Project. My hope has been, and we have expressed it at every opportunity in our filings at the FCC, is that this is an opportunity for the Commission to recognize and reward those licensees that are providing local service, contributing to diversity, satisfying the public interest and upholding those traditions of trustees of the public airwaves while simultaneously examining those bad actors in the field who are, you know, speculators or who were not serious, or who for reasons totally unrelated to the incentive auction have essentially gone dark but still hold permits in the hopes that someday they will be able to come back again. And I think that the advantage and disadvantage of this process is it is really going to help separate the genuine service to local communities and hopefully, you know, shine a spotlight on those and reinvigorate those, while also maximizing spectrum efficiency overall.

Mr. LIBIN. Thank you so much. I have to try to come back to the question that you had, and I think the question really was who will be impacted. And it is a great question. And if I knew that answer, then I would right now be sitting at the FCC, because I think they are the only ones who know. If you ask me who would be hurt, which LPTV and TV translator stations—well, not just stations but they could actually impact through a chain reaction through translators, because that is how they work. So how many? So the answer is, it is hundreds of thousands, or thousands. And it really turns out to be an amazing—nobody really knows. That is really the whole point.

We are looking for transparency here. We are really trying to understand. We don't. If you ask me right now do we want to slow down the auction? Do I want to stop it? The answer is absolutely not. We want this to go forward. We think this is in the best interest of America. But we want to do it right. We want to make sure that everything we are doing won't be held up, just—you know, I could just examples of health. I am not going there. But we all know that we want to do right. This is a major deal.

We are 2½ years into a 10-year process. We are not rushed. Let us get it right. Let us get it really done right. If we look at who is going to be hurt, if you look at the ownership of LPTV and translator stations, it is somewhat close to 30 percent is minority and women ownership. If you look at if we call it the other broadcasters and cable, I think it is less than three percent. Those are the people that would be hurt. It is the people—whether they are sitting in Oregon or sitting in Youngstown, Iowa, and this is the only way they receive you, or in Utah and wherever they are. There are so many of these stations and so many people who rely on this service that I think we just need to tread very lightly when we are considering moving ahead with the auction. We need to consider LPTV and TV translators.

Thank you so much.

Mr. BRALEY. Thank you, and I yield back.

Mr. WALDEN. Thank the gentleman. We will now recognize Mr. Latta for 5 minutes.

Mr. LATTA. Well, thank you very much, Mr. Chairman. And again, thanks for our witnesses for testifying for us today. And this, you know, is a very good discussion we are having here, because I know the question that the chairman asked, you know, why are some people against the bill? Ranking Member Eshoo was talking about that, you know, we are not always talking about rural areas, but, you know, it is areas that are impacted that have certain minority populations that could be hit. My friend from Iowa, Mr. Braley, was asking a question about who is going to be impacted.

But, Mr. Libin, let me ask you this, because, again, I represent kind of a unique area. It goes from very, very rural and into parts of a large city. And when you are looking at all these questions that have been asked so far by members of the committee, I guess the question is if we have—if the FCC is not mindful of these LPTVs and the translator stations throughout the spectrum auction and shut them down, will you have rural consumers, or as the ranking member mentioned in larger cities that you have certain minorities that might be impacted with that, what are the options that these individuals are going to have out there from the rural or to the city if this has happened that they wouldn't have these LPTVs?

Mr. LIBIN. I think that is a great question. When we talk about diverse, we are talking about financial as well. And there aren't always options. There are many options that all America—or a typical America could have when it comes to whether it is entertainment or news, or wondering if that there is a tornado warning is coming and how am I going to get that. Well, if they don't have this free over the air coming to them, and a lot of people this is the way

they do have it now, they are not going to know. They are not going to know what is happening in their community. They are not going to know what is happening nationwide. But especially local, they are not going to know, aside from I mentioned high school football and all of that. But it really has to do with life and public safety. This is their lifeline for many, many people.

And it is so interesting I brought up the Youngstown, Iowa before, because there are a number of LPTVs over there as well. But going back to when I was mentioning in the Bay Area, so—and you brought up the opposition to LPTV, you know, it really is like a chess game, because in the Bay Area, we were talking about the language that they were speaking from the Philippines was Tagalog. I think I pronounced that right. Was that correct?

Ms. ESHOO. Tagalog.

Mr. LIBIN. Tagalog. This language that they do. But there is also Vietnamese and Mandarin. And they are all intertwined in that area. And these LPTV and translator stations are put like chess pieces there. So you are correct. If somebody now says wait a second, we might have to move our station. Well, if you are now receiving—you have your population of Mandarin, then what are they going to do with this station over here? So you are absolutely correct that there could be. So these are all very, very good issues. But I am glad that we are discussing them, because all of this is very important to an underserved population.

Mr. LATTA. Well, thank you very much, Mr. Chairman. I am going yield back the balance of my time.

Mr. WALDEN. I thank the gentleman for his questions. Now, we will turn to—who is next on our side? Let us see. I think Mr. Long is next. Mr. Long, do you have questions for our witnesses, or a statement?

Mr. LONG. Thank you, Mr. Chairman. And thank you all for being here today.

Mr. Libin, can you give me a specific example of maybe just one example of a low-power TV station which would go out of business if the FCC makes changes to the incentive auction?

Mr. LIBIN. That is also a great question. So, as we know now, there are thousands of LPTV stations and translator stations. And I could make assumptions. But since we haven't seen any of the results of the auction yet, so I am not privy to what any of the results of the spectrum repacking study. This goes into the—all of this has to take the geography of the country, and then it goes down to the level of the specific area. And it has to—now, you have to do station coverage and decide well, there are different scenarios. How much spectrum are we getting back? If we are getting back so that we can sell in the auction a certain amount, it affects this number of stations. So you are asking a very, very good question. And I myself would love to know the answers, as well as the LPTV and the TV translator operators and owners, as well as the manufacturers of the equipment. Because within the past, I think, past month, just last week, one U.S. manufacturer of TV translator equipment has gone out of business because of all the uncertainty in this market. So—

Mr. BARTON. Would the gentleman yield, Mr. Long?

Mr. LONG. Yes.

Mr. BARTON. Let me rephrase the question that he just asked you, or give a generic answer. Wouldn't it be more likely that a low-power television station that had been operating in an area that had been rural but had now become more urban or suburban, and was in a growth area where there was a high demand for wireless services, and maybe like the Congressman's district in Branson, Missouri that if there were a low-power television station, that station might lose its license because of the demand for wireless carriage because the population had grown? Isn't that possibly an example?

Mr. LIBIN. That is absolutely a very good example. Another example that would hit home to Chairman Barton would be if you look at, for example, if you take Texas and you look at Dallas, you can actually follow the translators along the interstate, because that is where the populations are. And if one of them are impacted, the whole chain goes down. So in that effect, we are talking about a very big effect to a lot of people.

Mr. BARTON. I thank the gentleman.

Mr. LIBIN. Thank you so much.

Mr. LONG. Let me kind of follow up with all the moving parts and pieces. And I come from a 30-year background of the auction business. So I know a little bit about auctions. With all the moving parts and pieces that you are talking about, isn't that also going to affect how the bidders will look at what they need and what this auction will provide?

Mr. LIBIN. I think so. I mean, it has to have an impact. But the impact is really minor. It is a minor impact, because again just by name, low-power television are lower power television. So they just need to be considered just as if there was some terrain in the way or something else. There is the impact of low-power television into the auction to be considered in all the repacking scenarios is an impact, but it is not a major, major impact.

Mr. LONG. OK. Thank you. And, Mr. Feld, from your testimony here today, you obviously think that the FCC has done a great job so far with this incentive auction preparation. Do you think they have made any mistakes and should have done anything differently or did anything differently regarding auction preparation?

Mr. FELD. Well, I think that this has been a very challenging process for everybody, where everybody learns as they go. If we had known 2 years ago that this is where we were going to end up, we could have gotten here a lot faster. But I do have to say that one of the problems which I want to highlight is as Mr. Libin says from his perspective, this is a minor impact. But again, all of these impacts, because these issues are so tightly wound with each other, all have impacts everywhere else in the auction structure, which requires everything to be recalibrated. So I think part of the delay and part of the issue here has been how do you get all of these complicated pieces to work together when we have no guide and sometimes conflicting goals that the FCC has been instructed by Congress to balance? I also think that there is a concern about time. Mr. Libin has said, you know, we have 10 years to get this right. We don't really have 10 years. Congress gave the FCC 10 years to make sure that things could get done. But at impetus to pass legislation was the spectrum shortage, which we have been

concerned about, and the demand for wireless capacity continues to grow. It was to fund deficit reduction, to fund FirstNet. And the longer we delay the auction, the longer these remain outstanding items on our Federal budget ledger. So I think that particularly here where I do believe that the FCC has been overall doing a pretty good job of trying to thread this needle, and where we have a process that is unfolding now, then rather than have Congress drop another bill, tell everybody to go rethink does this legislation change the progress that we have made so far, that we ought to keep going, Congress should continue to exercise oversight. And if the further notice does not work out the way that Congress believes is necessary, there will still be time to take corrective action.

Mr. LONG. OK. Thank you. And I am way over my time. And thank both of you once again. And, Mr. Chairman, I yield back.

Mr. WALDEN. Mr. Long, thank you for your questions. Ms. Eshoo and I decided we are just going to put you in charge of the auction when we get this thing done.

Ms. ESHOO. Yes.

Mr. WALDEN. It would be a lot cheaper, faster, easier.

Mr. LONG. This thing here might take 10, 20, 30, 40 years.

Mr. WALDEN. That is all right. And we will raise more money, and we guarantee we will have more fun. Mr. Matheson, I am just going touch base with you one more time. OK. Then we will go to Ms. Ellmers for final questions, if you have any?

Mrs. ELLMERS. Thank you, Mr. Chairman. Mr. Feld, I will start off with you, just in continuing the conversation here. From what I am hearing, you seem to believe that the proposed LPTV legislation would delay the incentive auctions. Obviously, you kind of made that clear. And, obviously, this is problematic. But what are the consequences if the FCC fails to protect translators and LPTV stations?

Mr. FELD. Well, part of this is I understand that there is some—in your particularly—in the LPTV community, but from where we have been sitting and what we have been urging has been for the FCC to actually take great care to protect these services. The FCC has continued to recognize their importance.

Mrs. ELLMERS. Um-hum.

Mr. FELD. We have continued to stress their importance. You know, Public Knowledge is an organization that has supported localism and diversity in media for a very long time. I think we all recognize that if services in communities that communities rely and go dark, that that would be a grave disservice to those communities and would be contrary to over 80 years of communications long precedent. For that reason, I think that where the FCC is continuing to take these things very seriously, where the struggle has been to try to figure out how to balance multiple interests that Congress should continue to exercise its oversight.

Mrs. ELLMERS. Um-hum.

Mr. FELD. Be prepared to step in, if necessary. But legislation is a very big step. And contrary to what Chairman Walden may believe, I know the FCC takes the acts of Congress very seriously. At least they spend a lot of time considering them. And if there is a bill that is proposed now, my concern is that it causes everybody



to take their tokens, go back to go and reopen a lot of issues that we had thought were settled.

Mrs. ELLMERS. OK. Mr. Libin, I understand there is a 10-year window of time that has been mentioned already. What do you see is the relevant timeline for the LPTV and translators in terms of your feelings of the impact of the incentive auction? Are you coming down to a shorter period of time now, as well, considering all things?

Mr. LIBIN. Right. So first of all, our goal is, as I said before, is absolutely not to slow down the process at all. It is an optimization process. We now know more. We also know a little bit that the FCC sort of needs this nudge on LPTV and TV translators and boosters, because they have been advocating a little bit maybe on the side of the wireless providers. And that is where we sort of had this whole issue where now LPTV might be tertiary to the wireless providers. So I think that is why this is so important to come back with sort of the reminder from Congress that this is the way you have to treat LPTV. And I don't think that it really slows the process down. I think that in effect if we open it up, there are a lot of experts out there—a lot more experts who now could come in and can say and by the way, there are many tweaks that have to be done to the software right now. And so this is just another one. Let us add it in there. And let us see how far we can help keep the deadline, which is again we are all shooting for much less than 10 years.

Mrs. ELLMERS. Right. And, Mr. Feld, do you want to expand on that?

Mr. FELD. I would just like to add that our organization, Public Knowledge, other organizations in the public interest spectrum coalition, which include organizations that care a great deal about diversity in media, have consistently hoped that this can be a win for everybody. And one of the advantages of the ongoing FCC process is we continue to try to work with all of the communities who are involved to find solutions. As I say, we have proposed the solution that is actually proposed in this bill, this voluntary reduction in power in order to save licensees. We think that there are other ways in which we can cooperate rather than view this as a fight. And my hope is that in fact what we need is not a push for the FCC to go back to the beginning and force everybody to go through all of this again, but instead a nudge for all of the parties to come together and find solutions that are going to maximize the efficiency for everybody.

Mrs. ELLMERS. Um-hum. Thank you. And thank you both. And, Mr. Chairman, I yield back the remainder of my time.

Mr. WALDEN. Thank the gentlelady. And I thank our witnesses for your testimony. If you have other comments we should be aware of, please submit them. And I am sure we will probably have some questions perhaps from the committee, so we will keep the record open for submission of that, as according to our rules.

We thank you very much. And I thank everyone for being here and participating. And we stand adjourned.

[Whereupon, at 11:24 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Opening Statement of the Honorable Fred Upton  
Subcommittee on Communications and Technology  
Legislative Hearing on the Anti-Spoofing Act,  
the LPTV and Translator Act, and the E-LABEL Act  
July 24, 2014**

*(As Prepared for Delivery)*

The Energy and Commerce Committee has a strong record of bipartisan legislative success. Today, we look to build upon that record as we discuss three proposals to strengthen consumer protection, ensure appropriate consideration of low power television and translators in auction proceedings, and reduce regulatory burden on electronics manufacturers.

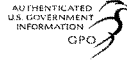
The Anti-Spoofing Act extends an important consumer-focused protection - the prohibition of caller ID fraud - to text messages. We have passed laws protecting voice calls from this sort of deceptive behavior, but as technology evolves, it's become clear that text messages are just as susceptible. By preventing senders from masking their identity, hopefully consumers will be less likely to hand over sensitive personal information to bad actors.

Next, the LPTV and Translator Act instructs the FCC to be mindful of low power television stations and translators as they go forward with implementing the broadcast incentive auction that was a product of this committee. This issue is important to many of our constituents, including those in both Mr. Barton and Chairman Walden's districts, and it is a topic worthy of discussion today to see what we can do to help protect these stations.

Finally, the E-LABEL Act is the type of bipartisan bill this committee embraces. Given the new developments and innovation in the device-manufacturing world, this legislation provides a practical solution that will reduce the regulatory burden on job creators. This legislation simply provides electronics manufacturers the flexibility to provide important information to consumers digitally instead of requiring a physical label on each product.

As always, I am pleased to see this committee discussing commonsense proposals and look forward to today's discussion on all three topics. Thank you to our witnesses for your time and expertise on these matters, and to the members and staff of the subcommittee for your hard work on the draft language.

###



113TH CONGRESS  
1ST SESSION

# H. R. 3670

To amend the Communications Act of 1934 to expand and clarify the prohibition on provision of inaccurate caller identification information, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2013

Ms. MENG (for herself, Mr. BARTON, and Mr. LANCE) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Communications Act of 1934 to expand and clarify the prohibition on provision of inaccurate caller identification information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Spoofing Act of  
5 2013”.

6 **SEC. 2. EXPANDING AND CLARIFYING PROHIBITION ON IN-**  
7 **ACCURATE CALLER ID INFORMATION.**

8 (a) COMMUNICATIONS FROM OUTSIDE UNITED  
9 STATES.—Section 227(e)(1) of the Communications Act

1 of 1934 (47 U.S.C. 227(e)(1)) is amended by inserting  
2 “or any person outside the United States if the recipient  
3 is within the United States,” after “United States,”.

4 (b) SPOOFING SERVICE.—

5 (1) IN GENERAL.—Section 227(e) of the Com-  
6 munications Act of 1934 (47 U.S.C. 227(e)) is  
7 amended—

8 (A) by striking paragraph (4);

9 (B) by redesignating paragraph (3) as  
10 paragraph (4);

11 (C) by inserting after paragraph (2) the  
12 following:

13 “(3) SPOOFING SERVICE.—The Commission  
14 shall prescribe regulations requiring a provider of a  
15 spoofing service to take such steps as the Commis-  
16 sion may prescribe to verify that any person who  
17 uses the service is informed of any applicable Fed-  
18 eral or State law.”; and

19 (D) in paragraph (8), by adding at the end  
20 the following:

21 “(D) SPOOFING SERVICE.—The term  
22 ‘spoofing service’ means a service that permits  
23 a user to knowingly cause any caller identifica-  
24 tion service to transmit misleading or inac-  
25 curate caller identification information. Such

1 term does not include a service to the extent  
2 such service transmits or displays without alter-  
3 ation caller identification information generated  
4 by another person.”.

5 (2) CONFORMING AMENDMENT.—Section  
6 227(e)(1) of the Communications Act of 1934 (47  
7 U.S.C. 227(e)(1)) is further amended by striking  
8 “paragraph (3)(B)” and inserting “paragraph  
9 (4)(B)”.

10 (e) TEXT MESSAGING SERVICE.—

11 (1) IN GENERAL.—Section 227(e)(8) of the  
12 Communications Act of 1934 (47 U.S.C. 227(e)(8))  
13 is amended—

14 (A) in subparagraph (A), by inserting “(in-  
15 cluding a text message sent using a text mes-  
16 saging service)” before the period at the end;

17 (B) in the first sentence of subparagraph  
18 (B), by inserting “(including a text message  
19 sent using a text messaging service)” before the  
20 period at the end; and

21 (C) by adding at the end the following:

22 “(E) TEXT MESSAGE.—The term ‘text  
23 message’ means a real-time or near real-time  
24 message consisting of text, images, sounds, or  
25 other information that is transmitted from or

1 received by a device that is identified as the  
2 transmitting or receiving device by means of a  
3 telephone number. Such term—

4 “(i) includes a short message service  
5 (SMS) message, an enhanced message  
6 service (EMS) message, and a multimedia  
7 message service (MMS) message; and

8 “(ii) does not include a real-time, two-  
9 way voice or video communication.

10 “(F) TEXT MESSAGING SERVICE.—The  
11 term ‘text messaging service’ means a service  
12 that permits the transmission or receipt of a  
13 text message, including a service provided as  
14 part of or in connection with a telecommuni-  
15 cations service or an IP-enabled voice service.”.

16 (2) RULE OF CONSTRUCTION.—Nothing in this  
17 section or any amendment made by this section shall  
18 be construed to modify, limit, or otherwise affect—

19 (A) any other authority of the Federal  
20 Communications Commission under section 227  
21 of the Communications Act of 1934 (47 U.S.C.  
22 227) or the CAN-SPAM Act of 2003 (15  
23 U.S.C. 7701 et seq.) to interpret a call to in-  
24 clude a text message; or

1 (B) any rule or order adopted by the Com-  
2 mission under such section or such Act that  
3 provides that a call includes a text message.

4 (d) COVERAGE OF OUTGOING-CALL-ONLY IP-EN-  
5 ABLED VOICE SERVICE.—Section 227(e)(8)(C) of the  
6 Communications Act of 1934 (47 U.S.C. 227(e)(8)(C)) is  
7 amended by striking “has the meaning” and all that fol-  
8 lows and inserting “means the provision of real-time voice  
9 communications offered to the public, or such class of  
10 users as to be effectively available to the public, trans-  
11 mitted using Internet protocol, or a successor protocol,  
12 (whether part of a bundle of services or separately) with  
13 interconnection capability such that the service can origi-  
14 nate traffic to, or terminate traffic from, the public  
15 switched telephone network, or a successor network.”.

16 (e) REGULATIONS.—

17 (1) IN GENERAL.—Section 227(e)(4)(A) of the  
18 Communications Act of 1934, as redesignated, is  
19 amended by striking “Not later than 6 months after  
20 the date of enactment of the Truth in Caller ID Act  
21 of 2009, the Commission” and inserting “The Com-  
22 mission”.

23 (2) DEADLINE.—The Federal Communications  
24 Commission shall prescribe regulations to implement  
25 the amendments made by this section not later than

1 18 months after the date of the enactment of this  
2 Act.

3 (f) EFFECTIVE DATE.—The amendments made by  
4 this section shall take effect on the date that is 6 months  
5 after the date on which the Federal Communications Com-  
6 mission prescribes regulations to implement the amend-  
7 ments made by this section.

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.....  
 (Original Signature of Member)

113TH CONGRESS  
 2D SESSION

**H. R.** \_\_\_\_\_

To amend the Middle Class Tax Relief and Job Creation Act of 2012 to protect the spectrum usage rights of low-power television stations, television translator stations, and television booster stations, and for other purposes.

\_\_\_\_\_  
 IN THE HOUSE OF REPRESENTATIVES

Mr. BARTON introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend the Middle Class Tax Relief and Job Creation Act of 2012 to protect the spectrum usage rights of low-power television stations, television translator stations, and television booster stations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “LPTV and Translator  
 5 Preservation Act of 2014”.

1 **SEC. 2. LOW-POWER TELEVISION, TELEVISION TRANS-**  
2 **LATOR, AND TELEVISION BOOSTER STA-**  
3 **TIONS.**

4 Section 6403(b)(5) of the Middle Class Tax Relief  
5 and Job Creation Act of 2012 (47 U.S.C. 1452(b)(5)) is  
6 amended to read as follows:

7 “(5) LOW-POWER TELEVISION, TELEVISION  
8 TRANSLATOR, AND TELEVISION BOOSTER STA-  
9 TIONS.—

10 “(A) IN GENERAL.—Nothing in this sub-  
11 section shall be construed to alter the spectrum  
12 usage rights of low-power television stations,  
13 television translator stations, or television  
14 booster stations.

15 “(B) PRESERVATION.—The Commission  
16 shall—

17 “(i) consider the benefits of low-power  
18 television stations, television translator sta-  
19 tions, and television booster stations to the  
20 communities of license of such stations;

21 “(ii) where possible, avoid the termi-  
22 nation of a low-power television station,  
23 television translator station, or television  
24 booster station, as long as such avoidance  
25 does not adversely impact the reverse auc-

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1           tion under subsection (a)(1) or the forward  
2           auction under subsection (c)(1); and  
3           “(iii) after the completion of the re-  
4           assignments and reallocations under para-  
5           graph (1)(B), permit any low-power tele-  
6           vision station, television translator station,  
7           or television booster station to request to  
8           operate at reduced power or from a dif-  
9           ferent transmitter location consistent with  
10          the Commission’s rules, if such station  
11          would otherwise lose its license as a result  
12          of such reassignments or reallocations.”.

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(Original Signature of Member)

113TH CONGRESS  
2D SESSION

**H. R.**

To promote the non-exclusive use of electronic labeling for devices licensed  
by the Federal Communications Commission.

IN THE HOUSE OF REPRESENTATIVES

Mr. LATTA (for himself and Mr. WELCH) introduced the following bill; which  
was referred to the Committee on

**A BILL**

To promote the non-exclusive use of electronic labeling for  
devices licensed by the Federal Communications Commission.

*Be it enacted by the Senate and House of Representa-  
tives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Enhance Labeling, Ac-  
cessing, and Branding of Electronic Licenses Act of 2014”  
or the “E-LABEL Act”.

**SEC. 2. FINDINGS.**

Congress finds the following:

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1           (1) The Federal Communications Commission  
2           (referred to in this section as the “Commission”)  
3           first standardized physical labels for licensed prod-  
4           ucts such as computers, phones, and other electronic  
5           devices in 1973, and the Commission has continually  
6           refined physical label requirements over time.

7           (2) As devices become smaller, compliance with  
8           physical label requirements can become more dif-  
9           ficult and costly.

10          (3) Many manufacturers and consumers of li-  
11          censed devices in the United States would prefer to  
12          have the option to provide or receive important Com-  
13          mission labeling information digitally on the screen  
14          of the device, at the discretion of the user.

15          (4) An electronic labeling option would give  
16          flexibility to manufacturers in meeting labeling re-  
17          quirements.

18   **SEC. 3. AUTHORIZATION FOR FEDERAL COMMUNICATIONS**  
19                   **COMMISSION TO ALLOW ELECTRONIC LABEL-**  
20                   **ING.**

21          Title VII of the Communications Act of 1934 (47  
22   U.S.C. 601 et seq.) is amended by adding at the end the  
23   following:

1 **“SEC. 720. OPTIONAL ELECTRONIC LABELING OF COMMU-**  
 2 **NICATIONS EQUIPMENT.**

3 “(a) DEFINITIONS.—In this section—

4 “(1) the term ‘electronic labeling’ means dis-  
 5 playing required labeling and regulatory information  
 6 electronically; and

7 “(2) the term ‘radiofrequency device with dis-  
 8 play’ means any equipment or device that—

9 “(A) is required under regulations of the  
 10 Commission to be authorized by the Commis-  
 11 sion before the equipment or device may be  
 12 marketed or sold within the United States; and

13 “(B) has the capability to digitally display  
 14 required labeling and regulatory information.

15 “(b) REQUIREMENT TO PROMULGATE REGULATIONS  
 16 FOR ELECTRONIC LABELING.—Not later than 9 months  
 17 after the date of enactment of the Enhance Labeling, Ac-  
 18 cessing, and Branding of Electronic Licenses Act of 2014,  
 19 the Commission shall promulgate regulations or take other  
 20 appropriate action, as necessary, to allow manufacturers  
 21 of radiofrequency devices with display the option to use  
 22 electronic labeling for the equipment in place of affixing  
 23 physical labels to the equipment.”.

24 **SEC. 4. SAVINGS CLAUSE.**

25 The amendment made by section 3 shall not be con-  
 26 strued to affect the authority of the Federal Communica-

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1 tions Commission under section 302 of the Communica-  
2 tions Act of 1934 (47 U.S.C. 302a) to provide for elec-  
3 tronic labeling of devices.

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (2021 225-2927)  
Minority (2021 225-3641)

October 24, 2014

Mr. Louis Libin  
Executive Vice President  
Advanced Television Broadcast Alliance  
382 Forest Avenue  
Woodmere, NY 11598

Dear Mr. Libin:

Thank you for appearing before the Subcommittee on Communications and Technology on July 24, 2014, to testify at the hearing on H.R. 3670, the "Anti-Spoofing Act of 2013"; H.R. \_\_, the "LPTV and Translator Act of 2014"; and H.R. \_\_, the "E-LABEL Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on November 7, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to [Charlotte.Savercool@mail.house.gov](mailto:Charlotte.Savercool@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden  
Chairman  
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment





November 4, 2014

Ms. Charlotte Savercool  
Legislative Clerk  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Ms. Savercool:

As directed in your October 24, 2014 letter, I am attaching to this transmittal letter responses to the questions for the record posed to me by Chairman Emeritus Barton pertaining to my testimony before the Subcommittee on Communications and Technology on July 24, 2014.

I was grateful for the opportunity to share the American Television Broadcasting Alliance's perspective on the LPTV and Translator Act of 2014 at the hearing and appreciate the chance to provide further information about LPTV stations in the attached responses. I would be pleased to address these issues in further detail for the Committee upon request.

Kind regards,



Louis Libin  
Executive Vice President

**Responses to Additional Questions for the Record by The Honorable Joe Barton  
Louis Libin, Executive Vice President, Advanced Television Broadcast Alliance**

1. **It is known that US manufacturers of equipment for LPTV and TV translator stations are suffering serious financial losses because of uncertainty about the fate of the LPTV and translator channels in the auction. Two of these manufacturers are Larcana and Axcera. Under financial pressure arising from marketplace doubts about the future for small TV stations, both have recently closed their US facilities with the loss of many jobs.**

**Without some legislative protection for small TV stations, is it true that the auctions are likely to cause loss of not only TV jobs but loss of many good manufacturing and engineering jobs in America?**

The FCC's ongoing Incentive Auction proceedings have created growing uncertainty in the broadcast industry that has slowed the purchasing of broadcast equipment to an all-time low. Not since 2009 has the market been so depressed and so little spent on broadcast and related products. The FCC's actions have caused most TV stations to significantly reduce capital expenditures and to delay wherever possible the purchase of broadcast equipment, in particular transmission products and related ancillaries.

We have witnessed the devastating impact of the Incentive Auction over the last 12 months on broadcast manufacturers. U.S.-based manufacturers such as Acrodyne, Axcera, Dielectric, Modulation Sciences and Larcana have all been dramatically affected to the point where they have closed operations and no longer manufacture any broadcast equipment. Dielectric has since re-opened but with a much smaller workforce. The job loss is not just confined to the several hundred engineers who work directly for these companies; rather, the impact is felt by the large number of people who provide services to the closed factories. For each engineer, there is likely a "times ten" multiple of people impacted by these losses. These factory closures not only reduce the available domestic suppliers but weaken the possibility of further U.S. innovation in this market segment. U.S. transmission product manufacturers were once recognized as world leaders in broadcast technology and exported many hundreds of millions of dollars of transmission equipment around the world.

Due to the lack of demand, even foreign manufacturers in the U.S. such as Screen Service, Elettronika and DMT have ceased domestic operations. Without the requirement of TV transmitters, transmission lines, and RF components such as combiners and filters and antennas, we estimated that many thousands of U.S. workers would lose their jobs, and the value of American expertise and leadership in this field will be lost forever.

Over the last three years, sales for most existing TV transmission product manufacturers have dropped by at least 75 percent. The average sales over the last 20 years of RF products are approximately \$600M/year, of which at least 20-30 percent came from exports. Today, it is estimated that sales of broadcast transmission products for the last two to three years has plummeted to less than \$150M/year. Sales are expected to fall even further in 2015 and 2016. Further reduction in sales of broadcast transmission products will inevitably put more companies

out of business, result in thousands of jobs lost, and, worse still, minimize the potential of any further exports of U.S.-manufactured RF products.

If there are fewer U.S. companies to provide broadcast transmission equipment, then this will significantly impact the possibility of what the FCC wants: a short-term re-packing of the spectrum. Even today, a significant re-pack cannot possibly be accomplished in the time currently forecasted; however, if many more companies go out of business, it will almost make any re-pack near impossible. If stations cannot purchase new equipment in a timely manner, if equipment cannot be re-tuned by experts, and if products cannot be installed in a timely manner, the re-pack will fail due to lack of resources, or in a worst case scenario, will put hundreds of TV stations out-of-business.

Without a clear understanding of how and when the re-pack will happen and to whom it will impact, most broadcast transmission equipment manufacturers will not be able to recover, with the consequent further loss of jobs, loss of exports, and loss of a world leading U.S. industry. Legislative protection is needed to prevent these dire consequences.

**2. The Federal Communications Commission is protecting full power stations in the auction, but they have not offered any protections to low power stations. Can you please explain the difference between full power stations and low power stations? Do you believe that viewers really know the difference? Who are these viewers?**

Low Power Television (LPTV) stations operate at much lower power levels and typically serve much smaller coverage areas than full power stations. LPTV service was created to provide greater diversity in free over-the-air television and fill a void in communities that were not fully covered by full power broadcasting.

The Federal Communications Commission (FCC) originally established LPTV service to enhance diversity and to achieve full utilization of the TV broadcast spectrum. The nature of full power television broadcasting demanded that the FCC require a significant geographical separation of hundreds of miles to prevent the signals of television stations operating on the same channel from interfering with each other. These requirements left gaps in the spectrum that provided an opportunity for smaller or lower power TV stations to operate without interfering with full power stations. LPTV stations were also created for niche broadcasting to address the need of minorities, women, and special interest groups, and for broadcasting in rural areas where full power stations were not able to serve the communities effectively. The ownership of LPTV stations is also diverse; for example, females own approximately 15 percent of LPTV stations.

LPTV service was designed to “fill in the gaps,” so, unlike full power TV, interference protection could not be guaranteed to LPTV operators. LPTV stations are “secondary” to full power stations – LPTV stations cannot cause interference to full power stations and cannot protest interference they receive from full power stations. The FCC never intended for LPTV to be secondary to wireless services.

Most full power stations are owned by large corporations or other institutions, while a large portion of LPTV broadcasters are “mom and pops” – hometown businesses that are serving their communities, providing hyper-local programming including civic affairs, local church services, weather alerts and unique programming for cultural minorities, linguistically isolated audiences,

and people of faith. For example, CFNT-TV in Wichita Falls, Texas covers a target community of 100,000 and offers countless hours of public service announcements and local information programs featuring local non-profits and more. Likewise, in California's Bay Area, more than 300,000 Filipino residents have access to local news and feature programs in both the Tagalog and English languages on the LPTV FilAm Network.

From the perspective of the viewer, other than the unique hyper-local and community-specific programming that is offered, there is no difference at all between low power and full power stations. Translators that carry major network affiliates far into isolated rural areas are indistinguishable from full power stations from the viewer's perspective. Viewers receive LPTV and translator stations using the same receivers and antennas they use to receive full power stations.

The LPTV industry is just now getting back on its feet from the "digital repack and transition." These "mom and pop" stations had to spend, in some cases, on the order of hundreds of thousands of dollars for new transmitters, antennas and broadcast infrastructure to conform to the digital standard. Many others had to move out of the way for a full power station and had to spend even more money filing for a new frequency.

More than 5,000 LPTV and TV translator stations across the country are serving consumers today. But the uncertainty created by the FCC's actions is preventing new investment in digital upgrades and new stations. Viewers do not know that the LPTV stations and translator stations they watch may simply vanish and never be seen again if they are eliminated by the FCC.

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

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October 24, 2014

Mr. Harold Feld  
Senior Vice President  
Public Knowledge  
1818 N Street, N.W., Suite 410  
Washington, D.C. 20036

Dear Mr. Feld:

Thank you for appearing before the Subcommittee on Communications and Technology on July 24, 2014, to testify at the hearing on H.R. 3670, the "Anti-Spoofing Act of 2013"; H.R. \_\_, the "LPTV and Translator Act of 2014"; and H.R. \_\_, the "E-LABEL Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on November 7, 2014. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to [Charlotte.Savercool@mail.house.gov](mailto:Charlotte.Savercool@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden  
Chairman  
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

The Honorable Joe Barton

1. In your testimony, you spend a great deal of time explaining the Federal Communications Commission's (FCC) incentive auction process and how the passage of the LPTV and Translator Act of 2014 would potentially hinder and delay this process. You also indicate that the FCC, in their *Incentive Auction Framework*, state that their plan is to hold a *Notice of Proposed Rulemaking* (NPRM) to mitigate the impacts of the auction on LPTV licensees and TV translators.

Please explain to me, in your opinion, how the results of this NPRM would not also potentially hinder the auction if, and arguably when, the results show that the auction will have an adverse effect on LPTV licensees and TV translators? What do you believe the FCC should do if this type of result actually takes place?

**The Further NPRMs are designed to fit within the existing framework and is proceeding immediately. Indeed, the necessary NPRMs are either already issued or on circulation. By contrast, Congressional action would require the FCC to commence a new process. The very act of requiring a new proceeding would serve to override the existing proceedings, since Congressional action implies disapproval with the existing processes. Nor would the new process necessarily fit within the existing framework. When Congress acts, it is incumbent upon the FCC to examine Congress' words carefully. Similarly, the introduction of new legislation, however carefully designed to have narrow effect, will invariably invite all parties – even those not directly impacted by the legislation – to relitigate issues from the broader proceeding. Historically, this is the manner in which complex proceedings work.**

**The Incentive Auction already faces significant challenges of timing and overall complexity. Since the FCC appears to be doing its job, it seems unwise to create further opportunities for delay by explicitly requiring a new proceeding to override proceedings already in progress.**

2. In your testimony, you emphasize the importance of the timetable adopted in the *Incentive Auction Framework*. I do not doubt that it took a great deal of time, energy, and effort to come up with such a guide to allow everyone to move forward, but you state that if this bill were to become law then the "FCC will nevertheless need to entertain comments and arguments from stakeholders on how the new statutory language does or does not alter the FCC's previous determinations."

While it is not the intention of Congress to hinder this process, do you not believe that it is better to conduct the auction in full confidence that all possible issues have been thoroughly considered and addressed instead of taking a blind eye to obvious concerns due to a timetable? When I think of this, I can't help but to think about the role of healthcare.gov. The launch of this site was a disaster that could have been prevented had the White House took the time to truly work through the glaring concerns instead of

focusing on a timetable. Don't you agree? If not, why not? Does success equal time or does it equal quality?

There has already been nearly two years of deliberation at the FCC to produce this framework, a framework that has already included conversations with the public and thousands of stakeholders. Furthermore, The FCC has taken the time to deliberately consult with internationally renowned experts to develop this framework and has published its timetable for the purposes of providing auction participants time to prepare for a successful auction. As I addressed in my testimony, the FCC has pledged to conduct a *Further Notice of Proposed Rulemaking*. For Congress to mandate that the FCC revisit decisions already made would complicate and possibly upend a process already underway.

While there is a temptation among some to compare the *Incentive Auction Framework* to healthcare.gov, the fact of the matter is that they are two completely separate and unrelated entities. The FCC has taken the time to ensure that there will be an effective and successful Incentive Auction.